S. HRG. 99-133

NOMINATIONS

HEARING

BEFORE THE

COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

WILLIAM CLARK DURANT III, OF MICHIGAN, ROBERT A. VALOIS, OF NORTH CAROLINA, MRS. CLAUDE GILBREATH SWAFFORD, OF TENNESSEE, LEA ANNE BERNSTEIN, OF MARYLAND, MICHAEL B. WALLACE, OF MISSISSIPPI, BASILE J. UDDO, OF LOUISIANA, THOMAS S. SMEGAL, JR., OF CALIFORNIA, LORAIN MILLER, OF MICHIGAN, HORTENCIA BENAVIDEZ, OF TEXAS, PEPE J. MENDEZ, OF COLORADO, AND PAUL BRADFORD EAGLIN, OF NORTH CAROLINA, TO BE MEMBERS, BOARD OF DIRECTORS, LEGAL SERVICES CORPORATION

APRIL 24, 1985

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NOMINATIONS

WEDNESDAY, APRIL 24, 1985

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SD-430, Dirksen Senate Office Building, Senator Orrin Hatch (chairman) presiding.

Present: Senators Hatch, Kennedy, Nickles, Grassley, Pell, Dodd, and Kerry.

OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. Today, the committee is holding what I hope will be our last hearing this year, concerning the President's nominees to the Board of Directors of the Legal Services Corporation.

The purpose of today's hearing is to accommodate a request from the minority that the new members of the committee have an opportunity to ask the nominees questions during a public hearing.

Two of the nominees, Mr. Robert Valois and Mr. Tom Smegal, are unable to be with us today because of prior scheduling conflicts. Arrangements have been made to ensure that the new members of the committee will have access to these individuals.

As I am sure we all know, the 11 nominees have been before this committee on several occasions, and their previous hearing records have been printed and made available to the public. The nominees were reported out of the committee last May, and it is my hope that this year, we will not only report them out of the committee, but we also will see them confirmed on the Senate floor.

Many of us on the committee believe that the nominees must be confirmed as quickly as possible because the corporation deserves not only an active board of directors, but one that has all of the tools traditionally at the disposal of a governing body.

The Corporation is at a critical juncture in its short history. This committee has documented in great detail numerous violations of law by former Corporation officials and Corporation grantees. Significant steps have been made by Congress to prevent similar abuses from occurring in the future. But to ensure that the Corporation is truly fulfilling its mandate of providing valuable legal assistance to the poor, we need more than just a series of detailed legislative instructions. We need a board of directors confirmed by the Senate, a board committed to providing legal aid in an effective, nonpartisan manner.

It is my understanding, from discussions with Senator Kennedy, that he will do all he can to help ensure that there is a quorum at an executive session to be scheduled within 2 weeks of today's hearing so that the committee can vote on those nominees.

Finally, I want to thank the nominees for their collective tolerance and patience during what has been a singularly arduous confirmation process.

I do not see any members of the minority here, so let me begin by just asking a few questions, and hope that the freshman Senators with the minority will get here and ask any questions they care to.

STATEMENTS OF WILLIAM CLARK DURANT III, PEPE J. MENDEZ, HORTENCIA BENAVIDEZ, LEA ANNE BERNSTEIN, PAUL B. EAGLIN, LORAIN MILLER, BASILE J. UDDO, MRS. CLAUDE GILBREATH SWAFFORD, AND MICHAEL B. WALLACE, NOMINEES

The **Chairman**. Mr. Durant, let me direct a question to you, and any of the other nominees.

I did not get to say hello to you today, Mr. Eaglin. It is good to see you.

Mr. Durant, did you want to make a few remarks?

Mr. **Durant**. The only thing I would like to say, Mr. Chairman, is essentially two things. One, we very much as a board appreciate the leadership that you have shown on this issue, in trying to assure that legal services for the poor are adequately delivered in a nonpolitical way.

Two, I want you to know that as a board we are committed to trying to fully and faithfully carry out the purposes of the Legal Services Corporation Act as passed by Congress, and that I think over the course of time, in the meetings that we have had, we have tried to demonstrate that we are going to be thoughtful and deliberative in all of our choices. I am very pleased to have been elected Chairman of the Board, and pleased that each and every member of this committee has contributed very much to our ongoing discussions and debate.

We look forward to being confirmed and to carrying out the purposes of the act.

The **Chairman**. Thank you. We look forward to having the confirmation process completed, ourselves.

Let me just ask you, Mr. Durant, and any of the other members of the board who would like to respond. Would you explain the practical consequences of having to serve as recess appointees instead of as board members confirmed by the Senate?

Mr. **Durant**. I think there are probably three difficulties in being simply recess apointees. One is, I think the importance of the work that has to be done is jeopardized by the lack of, if you will, continuity. As I think the chairman knows so well, there have been upward of 15 or 20 or more—25—names of people who have been involved with the Corporation over the last 3 or 4 years, and I think that confirmation will bring a sense of continuity and stability to the program.

Second, it will resolve the question of authority—there is a lawsuit pending now as to the extent of a recess Board's authority to exercise control over the Corporation's affairs, such contribute to a sense of instability.

And last, I received a letter a month or so ago from one of my fellow Board members, Professor Basile Uddo, in which he remarked that until there really is a confirmed board, acting with its full authority, it will be very difficult, based on conversations that he has had with some people in the field, to get the full cooperation of all of the field in working with us to try and have a program that carries out congressional intent. I think with confirmation will come the stability and the attempt to try and build a consensus that is so necessary to the health of this program.

The CHAIRMAN. Mr. Durant, as Chairman of the Corporation, I will address the following questions to you. You can refer them to any member of the Board you choose—

Mr. WALLACE. Mr. Chairman, excuse me. Could I add something to what Chairman Durant just said?

The CHAIRMAN. Sure, go ahead.

Mr. WALLACE. I was in Biloxi 10 days ago for our State bar's pro bono project conference. It is one of the things we are encouraging in the Legal Services Corporation, the active involvement of private attorneys in delivering legal services to the poor. I made a few remarks about how important that was to us, and how we were going to look for more creative ways to make the money we have go farther by involving private attorneys.

One of the project directors said to me something that I think was reasonable: When are you folks going to decide what is the best way to do things, and stop reinvestigating delivery services, private attorney involvement, every year?

And I said, it seems to me, when we are changing boards every 6 months, we all have time to learn the business and do not have time to stay around to do it. When we have got a confirmed Board, when we are going to be here for a 2- and 3-year period, we can make some long-range decisions and give some stability to the people that were asking me those kinds of questions. I think that is a problem for them, as well as for us.

The CHAIRMAN. Oh, I think it is a big problem. I think it is time that we in the Senate acted. I think most of the acrimony has been vented, and we ought to now do what really needs to be done—and I think we will; at least, that is my intention.

Now, my next question, Mr. Durant, concerns the Corporation's recent budgetary submission to Congress. Can you explain to the committee how the Board decided to request $305 million for fiscal year 1985?

Mr. DURANT. Mr. Chairman, we went through, initially, through our audit Committee under the chair of Mr. Pepe Mendez, a whole series of hearings and talking with people and reviewing documents, to determine what our budget request should be.

The bottom line essentially is that there were probably two reasons. One, I received a letter from Senator Rudman of our Appropriations Committee, outlining to us the tremendous problems with the budget deficit, and that we should be very sensitive to that issue in our deliberations and in thinking about developing new sources, sustained sources of funding.

So I think the tremendous river of red ink that the Federal Government is experiencing played a major part, I know, for some members of the Board deciding to come in with a freeze recommendation.

Second, there was a feeling that, given the riders and restrictions on our ability to allocate money, that in some cases, there would be plenty of money, but it is simply not being able to be targeted effectively because of the requirement that we continue to fund existing programs without being able to deal with questions of inefficiency of management and whatever. Third, the freeze is really an increase in terms of delivery of direct services to the poor. We recommended as part of the budget that 4.6 percent of our moneys actually go to increase direct delivery, as a philosophic statement by this Board that we want to emphasize front-line services.

I want to say that there was much debate within the Board as to whether we should go with the 305 figure. We had recommendations from some in the field who recommended that the appropriate amount should be as high as $1.2 billion; within the Board itself, there was a motion as high as $375 million, to as low as $241 million. But on a final vote of 7 to 4, the committee believed that the $305 million would be sufficient, because we would try and target and direct the money as it could be best spent and cut out administrative overhead where necessary and improve efficiency.

The CHAIRMAN. Is there any figure that you could have had unanimity on?

Mr. DURANT. Probably not.

The CHAIRMAN. Mr. Mendez, you looked like you wanted to speak there.

Mr. MENDEZ. Senator, we had a great deal of discussion, and as you are well aware, there was a lot of give-and-take about where the various line items, the dollar value in each line item. And I think the 305 was a good consensus, based on the various line items, and that everyone—I cannot say this, but I think that everyone can live with. Some of them are not happy with the figure, but I believe that everyone can live with it.

And I must state, as chairman of the Audit Committee, that I am very happy with that figure, and I believe that we can operate with that and provide quality legal services.

The CHAIRMAN. Well, thank you. I have been more excited about this Board than I have about any board on legal services for a long time, and I appreciate the tough problems that you have in these areas, and I appreciate the wide variety of opinions that you have on this Board. I think it is a good Board.

In the Corporation's recent budgetary submission to the Congress, support programs involving migrant workers were cut by some 21.6 percent, in order to provide more funds for those programs specifically charged with the direct delivery of legal aid.

Mr. Durant, would you explain the basis of this decision and your sentiments as to the impact that your decision will have upon the ability of Corporation grantees to address the legal needs of migrant workers who are income qualified?

Mr. DURANT. Let me just make two comments. Then I am going to refer the matter to Mr. Mendez, as the matter was fully debated within his committee.

I think it is important to understand that the way we are set up is that there are 47 migrant programs, only two of which are selfstanding—in other words, almost all are part of existing programs—and that therefore, when allocations are made on a census basis, the migrant populations are counted in those numbers, so that there is, you might say, a double allocation; there is a general contingent for the total program, which includes its census-based migrant numbers, but then we have additional funding that is directed to migrants. Because we gave an increase to all census-based direct delivery programs, if the priorities of those 40-odd programs determine that migrant needs should supersede other situations, then migrants, in fact, will be served by those priorities.

We went through extensive questions regarding the actual numbers, everywhere from the Department of Agriculture and the Farm Bureau to what we call the Lillisand study, to determine, in fact, how many migrants there really are that we are trying to serve. So we went through an extensive debate and discussion and reviewing of documentation to determine how many migrants, in fact, there are, and how best those can be served.

I am going to ask Mr. Mendez to give you some of the detail on that, because I think it is important in understanding that this was not a decision that was reached in any rash or quick way.

The CHAIRMAN. OK. Mr. Mendez.

Mr. MENDEZ. Senator, just one brief correction on Mr. Durant. There are, in fact, 41 subgrant migrant components of the 291 basic field programs and two stand-alones.

What this means is that they are subportions of the field programs. In the migrant program, the present funding is based on the Lillisand study, or the 1007(h) study—the terms are used interchangeably. In that study, the figures taken are for each State, and the way funding was arrived at for each State was based on the amount of migrants in the high month. It was not based on the total months that migrants are in a State. They took the high month in each State.

In reviewing that, it came to my attention that the base States—and when we talk about migrants, we talk about "base" and "stream" States. The base States are essentially three States—Florida, Texas, and California. And the base States have about 60 percent of the months where the migrants are working and are receiving approximately 40 percent of the migrant dollars.

In reviewing the basic total, we have not discussed how to allocate within the line item, but it would be my suggestion—and I have spoken to several of the board members about this—to ensure that the base States receive most of the funding.

This brings us back to what Mr. Durant was talking about, the double funding at the present time. The migrants were counted to the extent of between 90 and 95 percent in the general overall poverty population and overall population, according to the Census Bureau and the information we have from the Census Bureau. That means that for every dollar that we give to the basic field programs, we are using that population base, and then again, for all of the migrant population, we are using that population base again, and in effect, are double funding the migrants.

That is the reason why we believe that we can cut the 21.6 percent, and with some reallocations within that line item, provide an even higher and more quality migrant service.

The **Chairman**. Thank you.

Mr. Durant, a recent GAO Report dated March 29, 1985, indicates that in 1984, the Corporation awarded three contracts in a manner that has raised questions as to the propriety of the award process. During hearings before this committee, there has been testimony that similar questionable circumstances were involved in the awarding of over $1 million in 1981 to the National Legal Aid and Defenders Association.

Now, Mr. Durant, upon your confirmation, will you and your board be willing to review the Corporation's procedures concerning the awarding of contracts to ensure that all Corporation contracts or grants are awarded in a manner that ensures thorough and effective monitoring and sufficient public notice?

Mr. **Durant**. That review process is already being done, and I can assure you that it will take place.

The **Chairman**. So that is definitely going to be part of the process. That will solve, I think, a lot of the criticisms that have come your way—or, should I say, that have come to the Legal Services Corporation.

Whenever the Federal Government provides a free service, many have remarked that demand inevitably exceeds supply. The Legal Services Corporation has been no exception, and I am sure that all of us in this room will agree that the Legal Services Corporation as currently structured cannot handle all of the legal problems of poor citizens in this country.

Could you explain to the committee, Mr. Durant, what ideas you and other board members have or are considering which may maximize the use of existing Federal funds and encourage the involvement of others in providing legal assistance for the poor? Mr. Wallace has given us a little bit of an insight in his earlier remarks, but if you could just answer that question, I think it would be helpful to the committee.

Mr. **Durant**. I talked about this in Boston last weekend with a number of members of the Boston Bar and the volunteer lawyers project and the Greater Boston Legal Services groups. I think it is important to develop and encourage additional or alternative dispute resolution mechanisms. If we do, we can go a long way to trying to expand, you might say, the service base of the Legal Services delivery system.

The American Bar Association has begun what they call the multicourthouse door approach to resolving disputes, and they have started a program in Tulsa, here in the District of Columbia, and in one other place that escapes me, to explore less expensive alternative dispute resolution mechanisms that will be in some ways, frankly, even less confrontational and less costly than advocacy or litigation.

Also, what I think is very interesting about the ABA approach is that they are using in some instances nonlawyers to be involved in the process, recognizing that there are many people in our society that have dispute resolution skills, and we ought to be able to try and draw on those skills in a mediation, arbitration, or advocacy context, without the full panoply of litigation in the courthouse.

Some have said that any attempt to develop alternative mechanisms of dispute resolution is second-class justice. But I think if we look throughout our entire social community, every group, whether you are talking about large corporations or insurance companies or whatever, are all trying to develop less costly ways of resolving our disputes.

There is certainly a lot of creativity in our field with the number of the people who are involved, and I think—and I am talking about the existing staff programs—and I am sure that we will be able to draw on those resources and creativity to come up with less expensive ways of getting some of these disputes resolved.

The CHAIRMAN. Well, thank you.

I am somewhat disappointed this morning. It is now almost 9:55. Twenty-five minutes have expired. And the purpose of today's hearing was not for me to ask any questions, because I have interviewed every one of you. I am a strong supporter of each of you for I will do everything I can to see that you get confirmed. And this committee reported all of you out last year. And yet, all we had were delays and problems—by people who claimed that they are strong supporters of the Legal Services Corporation.

Now, the purpose of this hearing was to enable the minority or anybody else for that matter to come and ask questions. I am convinced that the majority is satisfied with the excessive prior hearings that we have had. I have had constant demands by the minority to have more and more hearings. Over the last 4 years, I have held these hearings, even though I am not particularly interested in them, and I rarely see any members of the minority attending. I am getting kind of tired of it, and to be honest with you, I think it is incumbent upon them, if they are so concerned about this board, and so concerned about the Legal Services Corporation to demand a hearing, to show up and ask their questions.

Now, Senator Kerry has indicated that he will be here at 10. If that is so, I will be overjoyed, but I am surprised that there are not more Democrats here, because all I have heard is complaints from their side. Frankly, I do not think it is fair to you—I think it is denigrating to you to have to sit here, without the people who want to question you being here, without their being here on time.

Now, I understand that all Senators are busy, and I understand that we all have many conflicts. But we set this hearing purposefully to allow the minority to ask any questions that they have of you and to get this matter resolved. And I do not see any Democrats here, and I do not know whether they will be here. But we will recess until 10, and if they are here, they can ask any questions they want. If they are not here, I am going to have to acknowledge that they must be satisfied. But I will ask each of you to do this—make yourselves available to any member of the minority who wants to chat with you; be as accommodating as you can. In other words, put yourselves out, even though there is some question whether they are putting themselves out—and especially after the 3 years, we have gone through this charade.

I am kind of tired of this treatment, and to be honest with you, I think I am justified. I was here 3 weeks ago, and I got berated, because we did not have many Republicans at the initial markup, and it turned out we had more Republicans show up than Democrats, ultimately, but berating continued anyway.

I do not mind, except that we have just gone through it and gone through it and gone through it. And I think it is time for some decency on the committee. Whether they intend to be decent toward me, notwithstanding I expect them to treat you with a certain amount of dignity and respect. You people have taken these jobs, and I think you are doing a good job; I think you intend to do the best job that has ever been done for the Legal Services Corporation. You are all dedicated to mending the problems of the past and resolving the problems and the conflicts, and I think it is time to get this board going and resolve these problems.

I am a supporter of the Legal Services Corporation—I think it could be done in a better way, but I am a supporter of it. I do not want any poor person to do without legal services if we can possibly provide it. I believe that most people on this committee are very sincere in their support of the Legal Services Corp., on both the minority and the majority sides. But it is kind of irritating to me to sit here and take my valuable time, when I do not have any questions. I have held this meeting for the sole purpose of allowing members of the minority to come and ask questions.

We will recess until 10:10. If the minority has not shown up, then we are going to recess, and we will just have to have them call on you and ask you to come and see them.

So we stand in recess until 10:10. I will give an extra 10 minutes.

[Short recess.]

The **CHAIRMAN**. Let me open the committee meeting again. Senator Nickles would like to ask some questions.

I have to say that 45 minutes have gone by and my gosh, I only held this meeting to accommodate the demands of the minority. Now I have been told that they do not want to be here until 10:30, because four of their members are on the Foreign Relations Committee. Well, if that is more important than this issue, then they could have called me, and I would have rescheduled the hearing—even though it means tremendous inconvenience to all of you.

Let me turn to Senator Nickles, and we will turn the panel over to him.

Senator **NICKLES**. Mr. Chairman, I echo your frustration. The agendas that all the Senators have are busy today, particularly in light of the fact that we are going to be taking up the budget later today, and voting on every issue that you can imagine the next week. To our panelists, did all of you fly in expressly for this hearing today—Mr. Wallace, where did you come in from?

Mr. **WALLACE**. Mississippi.

Mr. **UDDO**. Louisiana.

Mrs. **BERNSTEIN**. Maryland.

Ms. **MILLER**. Michigan.

Mr. **DURANT**. Michigan.

Mr. **MENDEZ**. Colorado.

Mr. **EAGLIN**. North Carolina.

Ms. **BENAVIDEZ**. Texas.

Mrs. **SWAFFORD**. Tennessee.

Senator **NICKLES**. So you have the expense and the time and the inconvenience of these Board members, who are recess-appointed Board members, all of whom have been before this committee last November, is that correct?

Now, Mr. Chairman, I can understand those new members having an interest in asking individuals questions. It was my understanding that that was the purpose, to accommodate their wishes. But if that is the case, they are over 45 minutes late, which has inconvenienced you, myself, and certainly all these people, not to mention the expense that they have incurred in coming.

I am also bothered by the tone that it sets for this year. Now, we have had other meetings where people start saying "Where is everybody?" So I hope that we will have better bipartisanship in this committee.

This committee was not an enjoyable committee to serve on the last year, because we did not meet for a quorum for over 6 months, and——

Senator DODD. Well, will the Senator yield? Maybe I can explain. I understand we have had a bit of a communications problem, Orrin.

The CHAIRMAN. We sure have.

Senator DODD. Well, let me just try——

The CHAIRMAN. We really have. Now, I appreciate having you here.

Senator DODD. Well, let me please try and respond, because we unfortunately have people who, as you know, serve on committees where we have one of the committee members as the key witness before a major markup of a piece of legislation—not just a hearing, but actually dealing with the South African legislation. And the request was unfortunately not effectively communicated. Whoever should assume responsibility for that should be so-called on the carpet, but it was not intentional, as I understand it, by any means at all.

But for the new members on the committee—the reason for the hearing, as I recall—we had the request that they be allowed to wait until 10:30 or 10:45 to come by. That apparently did not get to you, Mr. Chairman. That is either our fault, or somebody did not get up here.

The CHAIRMAN. They did, 5 minutes ago.

Senator DODD. And that was the reason for it, I am told. Now, I was not privy to the communications, but I certainly would not want anyone to believe for a single second that people over here were involved in an intentional effort to avoid the committee——

The CHAIRMAN. I have not meant to give that impression.

Senator DODD. It was really just a question of us not getting the message through, and we apologize to you.

The CHAIRMAN. Senator, if you yield, I accept your apology, and I appreciate it. Frankly, I have been irritated, because first, they asked me at 9:45 if I could give them 15 minutes, and so I did that, and then they said——

Senator DODD. You see, the key is, Senator Pell, Senator Kerry, Senator Kennedy, and myself are all on that other committee, either testifying or on the committee; and you have got Senator Simon, who has the Judiciary Committee markup——

The CHAIRMAN. Which I should be at.

Senator DODD. Yes. So that is the problem that occurred.

The CHAIRMAN. Well, you can see why I got upset, because there is only one reason for this hearing, and that is for the minority to ask any questions that they have, and particularly for those who are new on the minority; that was the purpose for the hearing.

Senator DODD. I understand Senator Kerry does very much want to come down, and the problem is the markup in the other place, and he was under the impression that he did not need to be here until after 10:30 and not at 9——

The CHAIRMAN. Well, I do not know how he would be under that impression, but let me just say this. I am not going to blame anybody. I think you can see the frustration for me as chairman, because I come and I hold hearings that I do not really think are necessary. We have put these people through unholy hell over the last number of years. We approved all of them last year, and yet we insist on a hearing so that the brand new Senators on the committee will be able to ask any questions that they have. I accommodate that, and I come and sit for 50 minutes without anybody showing up.

Now, you can understand why I get a little irritated, especially when, 3 weeks ago or whenever it was, I spent 1 hour listening to our ranking minority member berate the Republicans and me in particular, because we did not have a great number of people initially at the markup. And I thought he was right to say that Republicans ought to attend markups and ought to be there on time, too. So I went along with it, but it went on for about an hour, and finally, we had more Republicans than we had Democrats at the markup.

I just think we ought to get rid of some of the partisanship, and let's just do the job.

Then, I get a demand for all kinds of hearings, on the basis that these are hearings the minority wants. And yet, I have accommodated the minority over the last 4 years, I think, more than any committee chairman in the Senate. I do not know anybody who can say I have ever been unfair to the minority. And I show up at these hearings with all these witnesses, and I wind up being the only one there, listening to the witnesses that the minority wants to have heard. And you know, that gets kind of old.

I would like to see just some common courtesy. And again, I accept your personal apology on behalf of the minority. There is no reason to spend another second on it. I think you understand why I am upset, because nobody informed me, and I have waited 50 minutes without anybody showing up.

Senator DODD. Well, Mr. Chairman, certainly, it is terrible to have that occur and to have people come and be waiting. But clearly, the minority had made a request. Now, whether or not that request was effectively communicated to the staff——

The CHAIRMAN. Clearly, it was not communicated to me.

Senator DODD [continuing]. Then, that is a breakdown in communications, and there is a fundamental difference between a breakdown in communications rather than, at least as I understand, the implication that this was an effort to further delay.

I thought the request of having Senators Kerry and Simon, new members of the committee, not having been here before, was a reasonably intelligent request, and I presume new members on the committee on your side, as well, would want an opportunity like that—that was not, obviously, their request——

The CHAIRMAN. Everybody on our side is satisfied with the Board.

Senator DODD. But that was the intention.

The CHAIRMAN. I understand.

Senator DODD. That is all it was, nothing more. And we have the unique occurrence of having a key witness be the ranking person on the committee, before a committee where three other members serve, one of whom happens to be one of the newer members we are trying to accommodate. It is a bizarre confluence of events that created this situation to be tied up in a markup with that many members of this committee present in another committee for the last hour on a major piece of legislation, as we all know, the South African question, which is a tremendously important issue for many people in this country. And they will and want to be here, particularly the new members, to participate.

The CHAIRMAN. I understand conflicts. I happen to think that the Legal Services Corporation is maybe even a more important issue for this country, when you consider all of the comment about how the poor are doing without legal services.

But, be that as it may, I have to admit the other issue is important as well.

Let me just say this. I accept your apology. I am sorry I was not notified, but I accept it. I am just happy to get it going now, and let us ask any questions that we care to to these members of the Board, and I hope that we will be able to mark up these people for confirmation in 2 weeks, as we have all promised in good faith to do.

Senator DODD. Mr. Chairman, may I just make a suggestion?

The CHAIRMAN. Sure.

Senator DODD. It is now 10:30. Since you have been here some time, can we take 15 or 20 minutes and just take a recess and get the other people down from the committee, so we are not just sitting here——

The CHAIRMAN. Well, why don't we do this. We do have some Senators here. Why don't we ask whatever questions are in the minds of the Senators, because I am really pressured for time. I have got to be at a meeting at 11.

Senator DODD. I do, too. I have not been, myself, to two others, that I am trying to get to.

The CHAIRMAN. We have been in recess for half an hour, by the way.

Senator PELL. Mr. Chairman, I would like to make one suggestion which is, as you know, under the rules of the committee, anybody can preside as long as you designate them and they stand in that order. You can move on and let the new members come at a time certain which does not inconvenience you.

The CHAIRMAN. Well, I think that is a good idea. I am also concerned about the Board members, as well, because we have jerked them back and forth across the country for various hearings now for 2 years, and frankly, there is some courtesy that has to be extended to them, as well.

But be that as it may, we are all busy; we have all got our problems. I think an adequate explanation has been made.

Let's go from here, and if there are any questions by anybody sitting here right now, let us get those over with, and hopefully, Senator Kerry and/or Simon will arrive, and we will go from there.

Senator DODD. Fine. I am going to try and reach them right this minute, to see what their schedules are.

The CHAIRMAN. Fine. And I personally appreciate your efforts, Senator Dodd. I am very grateful to you.

Senator Pell, do you have any questions or any comments?

Senator PELL. No. I pass.

The CHAIRMAN. Senator Grassley, do you have any questions for the Board?

Senator GRASSLEY. Yes, I do. Before I do that, I want to put a statement in the record.

The CHAIRMAN. Without objection, we will put your statement in the record.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF SENATOR GRASSLEY

Mr. Chairman, as we meet to consider the nominations to the Board of the Legal Services Corporation that are are before us today, it seems to me that this is a good time to reflect upon our solemn commitment to provide support for legal assistance for those who cannot afford it. It seems to me that our ultimate goal ought to be to make sure that no individual is denied access to justice because he is poor.

Meeting the needs of the poor will require the broadest possible combination of community involvement, bringing to bear all of the mediation and dispute resolution mechanisms that exist in local communities. It is my belief that the Legal Services Corporation can help to coordinate those mechansims and bring them to bear on the legal needs of the poor.

Mr. Chairman, I feel that the nominees before us today may have the skills to encourage the widest posssible involvement of lawyers and nonlawyers alike in resolving the legal needs of the poor. Even with all of its resources concentrated on serving the legal needs of the poor, the Legal Services Corporation faces a monumental task.

Indeed, Federal bureaucracies like the Legal Services Corporation cannot meet all the legal needs of the poor, regardless of its mandate.

Frankly, Mr. Chairman, it is my opinion that the Legal Services Corporation has in the past failed to live up to its commitment to the poor. In hearings before this committee we have seen for ourselves examples of the diversion of significant human and economic resources away from providing legal services for the poor. Scarce resources were diverted into real estate and equipment, into political training and media advocacy, into political campaigns, and into shell corporations expressly set up to avoid congressionally mandated restrictions. When resources are diverted away from providing direct legal services, the legitimate needs of the poor—real, painful, personal legal needs—are often shoved aside. Neither the poor nor the American taxpayer can afford this.

Senator GRASSLEY. I would, I presume, direct my question toward Mr. Durant, but if anybody else might want to respond to it, particularly those who have previously served and are being reappointed, I would appreciate it. The question is considering not only your service on the Legal Services Corporation Board, but also even any thoughts you may have had before you began to serve on the Board and how they have been modified as a result of your service.

As you have studied the legal needs of the poor during your tenure at Legal Services Corporation, what have you identified as the major needs in this area of legal services, and how do you think they can be met most effectively?

Mr. DURANT. Senator, I think that one of the key needs that we are going to try and focus on are direct delivery of services. In our budget request, we specifically made a philosophic judgment as a Board that we were going to increase money that goes to front-line services, people who are out, meeting with clients on a day-to-day basis in large numbers. We think that that is where our emphasis simply should be. So we want to try and focus our work on how we can enhance, if you will, the number of troops in the field who are providing direct delivery of services, which means essentially that we made an adjustment regarding national support centers, we reduced their budget amount by 10 percent, and we have looked at a number of one-time grants that have been locked in as grants because of appropriation riders that emphasize more administrative kinds of things and that we want to focus on staff and front-line services.

So our examination of needs will be to examine it in that light.

Mr. MENDEZ. Senator, I cannot speak for the Board, but when I first came on, I was not as well aware of what all was happening in the legal services community in the country. And, after I have been able to study everything, I think that the most favorable impression I have is that the current services are doing a good job, that in order to expand services, I believe that we need to encourage larger pro bono, and that we need to do a combination of services to provide better and more across-the-board services to the poor of the country, and by "combination of services" I am talking about a larger share of pro bono, and judicare, and various experimental programs, because some of the experimental programs that we have encouraged so far have been very, very successful.

That has been the major change that I have seen, and in my opinion, I believe that that is the area we really need to explore.

Senator GRASSLEY. Does anyone else care to respond?

[Pause.]

Senator GRASSLEY. OK. One last question, Mr. Durant. We are past the day, then, when 2 years ago, the hearings brought out that there were so many resources being diverted to political and media advocacy, and activist training sessions, and things like that?

Mr. DURANT. Well, we hope we are past that day. One of the things that this Board is looking at seriously is how to effectively monitor the particular programs and to make sure that such abuses and whatever would not be recurring.

I have been, to the limited extent possible, making trips out into the field to talk with the different people in different field programs and whatever, and I know the Board, when they had one of their Search committee meetings down in Dallas, made a point of visiting one of the programs. And I think we are going to make a concerted effort to determine whether that kind of activity has, in fact, stopped. It does not seem as if it is still present to the extent that it was before. But I think the only way we can know that, in a way that is comfortable for those who have raised the questions, is to do a very thorough monitoring job and gather the information and then report it to this committee and to Congress.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Grassley.

It is now 10:30, and we will just wait a few more minutes. Senator Dodd is talking to some of his colleagues and seeing if they have any questions. Senator Pell?

Senator Pell. Mr. Chairman, just to fill the vacuum for a moment, I just have a couple of questions.

The Chairman. Sure.

Senator Pell. I was just curious, Mrs. Bernstein, I understand there has been some question with regard to your thoughts with regard to funding of Legal Services. Do you support the President's proposal for funding, or do you propose present full funding—what is your position?

Mrs. Bernstein. Well, my concern with funding is reflected in Senator Grassley's concerns regarding the Corporation. In 1981, the Corporation was at its highest level of funding, at $321 million. In 1982, at $241 million, the same number of cases were closed. There was between $41 and $57 million in carryover that year. It concerns me when we have situations in which our programs, funded with Federal dollars, are closing the doors purposefully in the face of the poor.

My concern with funding is that, as Senator Grassley pointed out, we have to make sure that every dollar we spend in Legal Services is spent properly, because otherwise we cannot defend the program. And I want to be in a position of saying, look, this is something that is laudable, this is something that is right, and we have no compunction about supporting it. And the only way we can do that is to really make hard decisions regarding how the funding is spent.

I made a motion at the Board meeting regarding a funding level of $241 million. I went back to the 1982 level because of the fact that the same number of cases were closed and because we do not currently know fully how the money is being spent, or whether these practices that Senator Grassley has mentioned have stopped.

This does not mean that I am hostile to the notion of Legal Services. In fact, in that same Board meeting I said once we are sure that the money is being spent accurately, then I would be glad to come back to the Congress and say I want a supplemental appropriation; we want more money, because we are confident that it is being spent properly.

Senator Pell. Just very simply, do you want full funding, a 20-percent reduction, a 40-percent reduction—what is your position?

Mrs. Bernstein. I am having problems hearing you. I am sorry, Senator.

Senator Pell. Oh. I am just asking what is your position. Do you wish to have full funding, or a 20 percent reduction—what is your position?

Mrs. Bernstein. My position at this point is that the $305 million freeze is something that I can live with, but I have a very strong concern with the kinds of issues that Senator Grassley pointed out.

The reason I made the motion for the $241 million at the board meeting was to stimulate debate about what we are really doing and not simply say we need the same amount, or more money because that does not answer the question.

Senator Pell. The President, as I understand it, wants to zero-fund it, isn't that correct, and abolish the agency?

Mrs. Bernstein. A zero budget figure is what I understand was forwarded by OMB.

Mr. **Mendez**. Senator, I would like to answer a question for LeaAnne. I am the Chairman of the Audit Committee, and as part of the Audit Committee, we passed the 305 by a 7-to-3 vote. I buttonholed LeaAnne, and she was one of the seven that voted for the $305 million.

Senator **Pell**. Well, thank you. You are all in a difficult position, I imagine, because the President wants to zero-fund you, and you are Presidential appointees, and the Congress wants you to continue at full funding. So I see the predicament in which you all are. But I think that our support for your candidacies is based in part on the enthusiasm with which we think you will pursue the objectives of the Legal Services Board which, if I remember, we set up about 20 years ago. And that is the essential point here.

Do any of you believe that it should be zero-funded, as does the President who is appointing you?

[A chorus of noes.]

Senator **Pell**. Not one of you. Thank you.

Excuse me, Mr. Chairman. I would submit some questions for the record in behalf of Senator Dodd, and a statement, and we would ask that the record be kept open, if you are going to recess.

The **Chairman**. Thank you, Senator Pell. We appreciate it, and we will keep the record open. We will also receive for the record at this time a statement by Senator Simon.

[The prepared statements of Senators Dodd and Simon follow:]

STATEMENT OF SENATOR CHRISTOPHER J. DODD
COMMITTEE ON LABOR AND HUMAN RESOURCES
APRIL 23, 1985

MR. DODD: MR. CHAIRMAN, TODAY WE HEAR FROM INDIVIDUALS THE PRESIDENT HAS NOMINATED TO SERVE AS MEMBERS OF THE LEGAL SERVICES CORPORATION BOARD. DESPITE THE FACT THAT THIS COMMITTEE HAS EXAMINED THESE NOMINEES IN THE PAST, THERE ARE SEVERAL VERY GOOD REASONS TO REVIEW THEIR QUALIFICATIONS TODAY. FIRST, WE HAVE NEW MEMBERS OF THIS COMMITTEE, SENATORS KERRY, SIMON, AND WALLOP. THESE COLLEAGUES SHOULD HAVE AN OPPORTUNITY TO QUESTION AND LEARN FIRSTHAND OF THE NOMINEES QUALIFICATIONS FOR, UNDERSTANDINGS OF, AND COMMITMENT TO THE LEGAL SERVICES CORPORATION. SECOND, IMPORTANT EVENTS HAVE OCCURRED SINCE THE COMMITTEE LAST DELIBERATED ON THE QUALIFICATIONS AND RECORD OF THESE NOMINEES, AND SUCH EVENTS SHOULD BE REVIEWED. THIRD, THIS COMMITTEE FAILED TO APPROVE THE NOMINATION OF SOME WHO ARE NOW SERVING AS RECESS APPOINTEES TO THE BOARD AND THEIR ACTIVITIES AS RECESS APPOINTEES SHOULD BE EXAMINED. LAST BUT NOT LEAST, THOSE APPEARING BEFORE

US TODAY ARE BEING ASKED TO UNDERTAKE A MOST CRITICAL TASK: NAMELY, THAT OF ENSURING THAT THE CONCEPT OF EQUAL JUSTICE ENSHRINED IN THE CONSTITUTION IS PUT INTO PRACTICE.

MR. CHAIRMAN, THE LEGAL SERVICES PROGRAM PROVIDES THE GLUE WHICH HOLDS TOGETHER THE SO-CALLED SAFETY NET OF PROTECTIONS FOR THOSE YOUNGER AND OLDER AMERICANS WHO HAVE NO MEANS OF CARING FOR THEMSELVES. TYPICAL CLIENTS SERVED BY LEGAL SERVICES ATTORNEYS INCLUDE MOTHERS LEFT WITH NO MEANS OF FEEDING THEIR CHILDREN WHEN A BENEFIT CHECK DOES NOT ARRIVE, FAMILIES FACING HYPOTHERMIA BECAUSE THEIR LANDLORDS HAVE NOT PAID A UTILITY BILL, AND FRAIL OLDER AMERICANS FACING NEGLECTFUL OR ABUSIVE TREATMENT IN A NURSING HOME. TO LEAVE SUCH CLIENTS WITHOUT ACCESS TO LEGAL REPRESENTATION IS TO UNDERMINE THE VERY PROGRAMS DESIGNED TO MEET THE HEALTH, NUTRITIONAL, AND HOUSING NEEDS OF OUR MOST VULNERABLE CITIZENS.

THE LEGAL SERVICES CORPORATION WAS ESTABLISHED OVER A DECADE AGO BECAUSE CONGRESS FOUND THAT NO OTHER MEANS OF IMPROVING VULNERABLE AMERICANS' ACCESS TO LEGAL COUNSEL HAD PROVEN

ADEQUATE. TODAY, IT IS ESTIMATED THAT EVEN WITH THE LEGAL SERVICES PROGRAM INTACT, WE ARE STILL ONLY ADDRESSING ABOUT 10% OF ALL THE LEGAL DIFFICULTIES ENCOUNTERED BY LOW-INCOME CITIZENS FROM CONNECTICUT TO CALIFORNIA.

MR. CHAIRMAN, SINCE 1981 THE BUDGET OF THE LEGAL SERVICES PROGRAM HAS BEEN CUT BY SOME 25%. GIVEN THESE FISCAL CONSTRAINTS AND THE PRESSING NEED TO IMPROVE ACCESS TO LEGAL COUNSEL FOR MILLIONS OF AMERICANS, THE SENATE SHOULD CONFIRM ONLY THOSE NOMINEES FULLY COMMITTED TO THE EFFECTIVE OPERATION OF THE PROGRAM. I LOOK FORWARD TO RECEIVING TESTIMONY FROM THE WITNESSES THIS MORNING AS TO THEIR COMMITMENT IN WORD AND IN DEED TO UPHOLDING THE LEGAL SERVICES CORPORATION ACT.

OPENING STATEMENT SENATOR PAUL SIMON (D-IL)

I welcome each of the nominees of the President to serve on the Legal Services Corporation Board of Directors. Many of you have been here before and the process of considering your individual and collective qualifications has been a difficult one. I hope that each of you understands the importance that the Committee attaches to your collective responsibility and your individual qualifications to provide policy-making and leadership for a program which is both necessary and important to the Nation's poor.

As a new Senator, and a member of this Committee, as well as, the Committee on the Judiciary--I take special pride in reviewing the role of the Legal Services Corporation in overseeing the provision of legal services to the poor in Illinois and across the Nation. In fiscal year 1982, the Congress approved a 25% reduction in the funding for the national Legal Services Corporation from $321 million to $241 million. In Illinois, the results of this drastic cutback was a reduction in the attorney staff of LSC-funded programs from approximately 230 attorneys to approximately 150 attorneys, and to force the closing of 13 of 37 LSC-funded branch offices. Since 1982 there have been increases in the total LSC grants to Illinois legal services programs because 1980 census figures were utilized in calendar year 1983, and these figures established an 11% increase in the number of poor in Illinois. In claendar year 1985 on a statewide basis we are receiving only 1% more LSC funds than in 1981. The National LSC appropriation is still $16 million less that the LSC appropriation in 1981.

It is clear that the Legal Services Corporation is providing a diminished kind of representation to the poor. I really wonder if each of the nominees considers the kind and quality of services to be equal to those available prior to Fiscal Year 1981.

While serious concerns have been raised about the respective qualifications of some of the nominees--in areas that I consider critical, including civil rights, adequate services to migrant workers and their families, and the so-called "privatization" of legal services--I am prepared to vote for the entire panel on the floor of the Senate, if I receive positive answers to the following questions:

- Adequate Funding -- will you support adequate appropriations for the corporation, in an amount sufficient to provide the same level of service to all eligible persons, according to the 1980 census?
- Role of the Private Bar -- will you resist efforts to suplant legal services attorneys with respresentation from the private bar, unless you are absolutely assured that the quality of legal services and the commitment to legal aid for the poor will not be diminished?
- Areas of Legal Service Attorneys Practice -- will you work to assure the continued emphasis of legal services attorneys in the following principal areas of practice: family law, housing, income maintainance and consumer credit?

In my view, your answers to these questions are more important to the maintenance and improvement of high-quality legal services. I am willing to forget your past record, if you will commit yourselves, individually and collectively, to acting in the best interests of the Nation's poor. Your individual views and the Philosophical views must be sublimated to your responsibility of public service to the millions of poor people who seek assistance and legal services at the coporation's offices across the nation.

The **Chairman**. Why don't we recess for another 5 minutes, and then if we have somebody arrive, we will continue; if not, I am going to recess permanently.

[Short recess.]

The **Chairman**. I am going to reconvene quickly, because Senator Kerry has arrived. Senator, we are happy to have you here, and we will give you an opportunity to ask any questions that you may have.

So we will reconvene and we will turn to you, Senator Kerry. We appreciate your being here.

Senator **Kerry**. Mr. Chairman, thank you very much, and please accept my apologies to you, to the committee, and especially to the nominees, who have been waiting so long. I regret that somehow, we have got to find a way to get either two persona that are the same Senators to be able to attend multiple hearings, but my colleague, Senator Kennedy, was testifying before another committee that I am on, and it was important that I be there because of that, and I know it is important I be here simultaneously. So I am very apologetic.

The **Chairman**. We understand, and we are grateful for your being here at this point.

Senator **Kerry**. I appreciate the opportunity to be here, and if you will allow me a moment just to shift gears here and get my notes together.

There are a number of questions, and unfortunately, time is obviously not going to allow us to go through all of them, so I would like to submit, if I can, to all of you a request that you submit to me in writing the answers to at least three fundamental questions and perhaps some others. But maybe I could ask Mr. Durant to lead off with these initial questions, which I will submit to all of you.

One is, do you, Mr. Durant, support the continued Federal funding, at least at current level, of Legal Services?

Mr. **Durant**. Yes.

Senator **Kerry**. And which level would you support—is that the 241 or the 305?

Mr. **Durant**. The 305.

Senator **Kerry**. All right. And should the administration at some time in the future ask you to try to reduce that 305 level, would you intend to come before this committee to ask the committee for 305, or for the administration's lower level?

Mr. **Durant**. I was asked in front of the House Appropriations Committee a similar kind of question, whether or not we could get along with less money. My answer was simply that I think we could, depending on the development of other sources. In other words, for example, the IOLTA Program, which is interest on lawyers trust account, which started effectively only in the last couple of years to develop what could be a fairly substantial base of additional support for the program. As Reese Smith said to me, the former president of the ABA, obviously, there needs to be certain kinds of sustained other sources, and that IOLTA may in fact be one of those. There are 35 States who have authorized it, and about 15 have implemented programs. Approximately $22 million has been collected; about $6 or $7 million of that has been distributed.

You do not want to have anybody in the lurch if adjustments were to be made.

Senator Rudman sent me a letter in December, pointing out that because of the budget crisis and whatever, that all the discretionary programs would be under scrutiny, and could we develop supplemental, alternative, additional, or whatever sources of support. I have talked to a number of people to explore that. In fact, I was recently in Boston, meeting with different people to discuss just that subject, because as you know, the Massachusetts Legal Assistance Corp., which is really one of the leaders in this particular area, was able to get a statute passed—I think it was a few dollars or whatever on certain complaints that were filed—to provide it with funding, and I think they have raised just in excess of $1 million-plus or whatever dollars.

Just before you arrived, it was pointed out that in 1981, when we had roughly $241 million, and in 1982, when we had roughly $321 million, we closed the same number of cases, roughly. I think we should focus on how we are maximizing the expenditure of funds. Are they getting bogged down in administrative things? Can we do what we are doing better with less, if the budget crisis or other things were to force us to do that?

Senator KERRY. But you would agree, wouldn't you, that the measurement cannot be by a fixed number of cases on an annualized basis, I mean, particularly if there have been reduced funds in prior years.

Mr. DURANT. I think that you cannot measure it strictly on number of cases opened and closed, because even in my own practice, obviously, there are some cases on which I have to spend a substantial amount of time, but it only shows up on my firm's records as one case. And yet, the time commitment obviously had to be of a fairly substantial sort. So that is not the only criterion, of course; I agree with you.

Senator KERRY. Let me ask you what you believe—and I will then ask Mr. Mendez also to follow up on this—but what do you believe ought to be the criteria by which you submit a budget request to us for Legal Services?

Mr. DURANT. Well, I think the first criterion ought to be to look at our statutory purpose, and——

Senator KERRY. Do you concur with the current statutory purpose?

Mr. DURANT. Yes. I mean, I think our job is to try and provide, as the initial four paragraphs talk about, "individuals who are aggrieved, who seek access for redress of grievances," and goes through the——

Senator KERRY. Are you going to seek any changes in the current statutory purpose?

Mr. DURANT. Under our Operations and Regulations Committee and others, we will be going through a debate regarding—because we are going through the process of reauthorization, both with this committee and also on the House side—and I do not anticipate any, but I am certainly open to discussions as to how we can better do what we are supposed to be doing. If that means in some way or other expanding on a definition of the purpose, then that will obviously be part of the debate.

Senator **Kerry**. Now, obviously, you are Presidential appointees, and you are arriving at this, where it is clear that the President has over the years sought to eliminate all funding. So I would ask you how you reconcile the appointment with the purpose of the organization.

Mr. **Durant**. Well, I think there are a number of different levels to try and reconcile it. No. 1, is that the President has to make judgments regarding a whole series of programs and activities in making funding requests.

This entity is set up by Congress to be an independent, nonprofit, District of Columbia Corporation, and that therefore our responsibility is to carry out that congressional purpose. Even our whole budget cycle is not controlled by OMB. We make those judgments on our own. I said in the mid-February meeting of the ABA for past bar presidents that the President's recommendation for zero funding was courageous because I thought that it would allow a certain kind—and was quoted recently in the New York Times saying that, as well—of a debate to take place as to how best we can be doing what it is that we are supposed to be doing. Fundamental questions need to be asked.

But I supported the 305 recommendation because I think right now, that is the kind of money that is going to be necessary to do what we are supposed to do.

Senator **Kerry**. What about for fiscal year 1987, and 1988?

Mr. **Durant**. We have not in the Audit and Appropriations Committee addressed that number. What we are going to try and do, through looking at needs studies and also looking at questions of efficiencies of operation is what kind of numbers are we really talking about.

Senator **Kerry**. Can you imagine that it would be less than 305?

Mr. **Durant**. Yes. If, in fact, other kinds of things were to happen—I mean, if in fact, you could find—and maybe you cannot—but for example, say that there was—I can think of some ways. One, if IOLTA is the tremendous engine for development of funds, it would seem to me that that would certainly be a factor that one ought to take into account as to whether or not what the numbers should be. Second, if there were things like the Massachusetts Legal Assistance Corp. activities or whatever, that were providing additional sorts of support. Third, if in fact we could find that some of the things that we do, we can do less expensively. Fourth, is the whole contribution of pro bono work. There are 600,000 lawyers out there. President Shepherd of the ABA was telling me 2 weeks ago that only 72,000 of them are committed to pro bono work in an organized fashion.

I think it is a matter always of trying to leverage and maximize our resources to get the best results.

Senator **Kerry**. When you were sitting on the—I cannot remember exactly when it was you made this comment, but it intrigued me, and I would like to follow up on it a bit, if I can. You said something to the effect that we ought to be developing creative ways of finding new sources, alternative sources, of funding, because you think it is important to find ways of depoliticizing what is happening.

I wonder how you feel—first of all, where you would look—that you think you might have success in finding any other alternative sources of funding; and second, why you think funding other than that provided by the Congress, which is fundamentally open, without any kind of private attachment of any sort whatsoever, but only with the statutory goals attached to it, why that is not the most depoliticized of all?

Mr. DURANT. That is a very good question, and there are two parts to it. Let me do the first first.

We had a witness testify in front of our board, a woman by the name of Dr. Jane Merritt. She was a special adviser to Ambassador Gean Douglas in the State Department. She was brought onboard because there were approximately 100,000 Laotian refugees that had come into the country, were located roughly in six, seven or eight States. Their legal needs, among others, were not being addressed.

Ambassador Douglas asked Dr. Merritt to see what, if anything, could be done. Dr. Merritt began to meet with a number of lawyers in all of the different kinds of communities in which the refugees were located and began to assist them, not only with their legal needs, but also to assist themselves in integrating them into our communities so that they would not be isolated and exploited.

What is very interesting, Senator Kerry, about this group is that you are dealing with people who are basically third and fourth generation out of the cave. I mean, as Dr. Merritt said, they were preliterate people in many, many cases, and very much subject to exploitation. Dr. Merritt went through all the particular things that she had done. She was able, for example, to call on Peter Stroh, of Stroh Brewery, to have his assistance in helping to find the right people in terms of employment, in terms of using their lawyers who normally, as you can well imagine, I am sure, would receive substantial private billings, to be encouraged to help and to participate.

So I think there are lots of creative ways to develop alternative support. We need to simply be open to expand what it is that we are doing. I have, in a sense, a broad vision——

Senator KERRY. But it is absolutely clear in your mind that that would be an expansion and not a diminution?

Mr. DURANT. I see that as an expansion, sure.

Senator KERRY. Let me ask Mr. Mendez, if I may, what his response would be as to the issue of funding. What level do you believe is the funding level that would be appropriate?

Mr. MENDEZ. May I refer to the various questions you asked Mr. Durant?

Senator KERRY. Absolutely.

Mr. MENDEZ. Do I support 305? Yes; in fact, I was the one that really stuck to my guns and said I believed that 305 was the appropriate figure, and that I wanted to freeze it this year.

You asked the second question, can you imagine less than 305? I, of course, can imagine less than 305. Whether I think it is probable or not is another question.

You also asked a further question about 1987-88, and we are recess appointees. Up to this point, in 1987 and 1988, it is not a very relevant question to ask. We cannot bind future Boards unless we are here. To this question, at this time, I would say that in fact, we will be looking at 1987 and 1988 if, in fact, we are confirmed. But until we are confirmed, there is——

Senator **Kerry**. Well, I am not asking you to bind the Board, and I am certainly aware that you cannot do that, and we are not in the 1987 or 1988 cycle, obviously. But I am trying to get a sense of what your beliefs are about funding, based on your knowledge of the problems that you face in trying to provide services.

It seems incomprehensible to me, given the increase within the Justice Department of funding for a pursuit of certain problems in the area of welfare and other kinds of things, that you folks are not going to have increased responsibilities.

Mr. **Mendez**. Senator, we believe that we will have increased responsibilities. In fact, even though it is a 305 freeze this year, for basic field programs we have increased the funds.

Our philosophical basis—or, my philosophical basis—I do not want to speak for the Board—I want to see direct delivery of legal services to the poor. I want to make that my major emphasis.

We have, in fact, by this budget, increased direct delivery of legal services to the poor. We have cut back on areas where it is not directly involved on a one-to-one basis with the poor.

In the future, I would expect that the budget would probably increase depending, of course, on what Mr. Durant is talking about—the mix of pro bono, judicare, IOLTA—what all of these do, because these are, in fact, supplementing what we are doing now.

Senator **Kerry**. So if you were to come with any other kind of funding request before this committee, you would come with some kind of explanation of why you are diverging from each of those things you have just itemized.

Mr. **Mendez**. Oh, sure, surely. If we are going to cut something, you are entitled to a justification for it.

Senator **Kerry**. Give me a sense, if you will, what your own personal feeling is, notwithstanding any restrictions which may exist today with respect to the provision of services—what is your own personal feeling as to the scope of what a Legal Services lawyer ought to do in providing services to a client.

Mr. **Mendez**. Scope?

Senator **Kerry**. Yes; I would like your definition, your sense of the appropriate role of a Legal Services lawyer in serving that client.

Mr. **Mendez**. He has to do everything, bound by two limitations. One is the statute that we are operating under, the overall statute we have, and second, the canons of ethics. He has to do everything within those two provisos to represent his client.

Senator, I am not aware how much you know about the proviso in the act and how the different local programs select which cases they will take or not. He also is bound by those rules of the local programs. For instance, various local programs say that they will not handle domestic cases, and as a result, he has to be bound by what the local programs tell him to do.

We as a Board are not looking at those particular items.

Senator **Kerry**. Well, I am not unaware of the fact that there are obviously restrictions, and I realize that each of the local providers have their set of regulations, et cetera, as well as yours.

But what I am really trying to get at is—I mean, this is an advocacy role, and I would really like to understand your perception of what that sense of advocacy is; what does it involve, and what are you trying to achieve?

Mr. **MENDEZ**. Well, the only way I can tell you is that I am a lawyer. I go into court. I advocate. I am bound by the canons of ethics and the rules in my State. These lawyers are bound by the canons of ethics, the rules in their States, as well as the statute they are operating under.

Senator **KERRY**. Do you think as a lawyer, given the canons of ethics and lawyer/client relationship that it is appropriate to have any restrictions on what an attorney can do to pursue a civil redress of grievance for an individual? I mean, if a poor person engages an attorney, we are really paying for the attorney. It is up to the attorney, isn't it?

Mr. **MENDEZ**. Now, you are asking a question—a Legal Services lawyer, or just a lawyer?

Senator **KERRY**. A Legal Services lawyer.

Mr. **MENDEZ**. He is bound by everything, considering what the statute provides. There are certain restrictions in statutes that the lawyers cannot do.

Senator **KERRY**. And you agree with all of them?

Mr. **MENDEZ**. Senator, I may not agree with all of them, but I have agreed to uphold the statute in all of the cases.

Senator **KERRY**. Are there any that you might——

Mr. **MENDEZ**. Let me give you an example.

Senator **KERRY**. Sure.

Mr. **MENDEZ**. I represent—90 percent of my clientele is Hispanic. Over half of my clientele only speak Spanish. I have a goodly number of clients that are illegal aliens—I do not care what you want to say about them. I personally believe that it is probably appropriate for us to represent those people, but the statute says no.

Senator **KERRY**. Will you try to seek a change to permit that representation?

Mr. **MENDEZ**. I had not thought about that at this point.

Senator **KERRY**. Would you be willing to think about it?

Mr. **MENDEZ**. Most definitely.

Senator **KERRY**. And would you submit to us your thoughts about it and how we might pursue that?

Mr. **MENDEZ**. Surely. Can I ask you a question? [Laughter.]

You have before you the bill on aliens. Can you tell me what the position of the Senate is—that would make my answer very simple.

Senator **KERRY**. Well, I am just a mere freshman. [Laughter.]

The **CHAIRMAN**. Now, don't hide behind that, Senator Kerry.

Senator **KERRY**. Far be it from me to hide, as you know, Senator. I think the Senate is going to take that up very shortly, from what I understand.

Mr. **MENDEZ**. I have several clients who really wanted to hear that.

Senator **KERRY**. That is my understanding.

Let me ask you also, I understand Legal Services Corporation stated in response to a letter from Representative Kastenmeier, quote, "The Board can assure Congress that no changes in the delivery system will be made until a study of the number of migrants, by reference, has been completed, analyzed, and fully discussed with Congress."

Has the Board started such a study?

Mr. MENDEZ. We have instructed them to do that. I have asked—I have a staff member who——

Senator KERRY. Is that instruction in writing?

Mr. MENDEZ. No, it is not—but may I explain. I have asked Mr. Thimmell, who is a staff assistant assigned to my Committee, to begin procedures. He has gone out, and he has spoken to several different agencies to find out if there are any studies currently undergoing. Because I believe there is one at HHS, they are currently undergoing a study on migrants, and there is no sense in reinventing the wheel, if we can tag along with them and ask a few extra questions on those things.

The money is precious, and we should not be spending a lot of money if we do not have to.

Senator KERRY. But you did assure the U.S. Congressman you were going to make a study?

Mr. MENDEZ. Yes, and in fact we are doing that. We are determining what is the most effective way to do it.

Senator KERRY. When will that be completed?

Mr. MENDEZ. Clark Durant, after the last meeting, suggested that, and I have not been back to find out what type of thing—I would hope that we can do that—depending on what HHS has, their aspects—that is what I would hope to do is to have that before the last part of September.

Senator KERRY. What has the board voted on, in terms of funding for the migrant legal services programs?

Mr. MENDEZ. The Board, before we met with Congressman Kastenmeier, voted on a 21.6-percent cut in migrant programs.

Senator KERRY. And on what basis did you decide on a 21.6-percent cut?

Mr. MENDEZ. Let me sort of go back through. The basic field programs are all census based. The migrant funding is also census based.

We believe, based on the information that we have in front of us, that we were double-paying on migrants to the extent that migrants were counted in the census. And we believe that the migrants are counted in the census to the extent of approximately 90 percent of the migrants. I believe that, and it is supported by some of the documents which we have from the Census Bureau.

Senator KERRY. Well, it is my understanding that those cuts may mean that as many as 20 out of 34 migrants are going to be eliminated from funding under that program.

Do you disagree with that?

Mr. MENDEZ. Senator, let me see if I can give you some other information that we have——

Senator KERRY. Well, do you disagree with that, though?

Mr. MENDEZ. Depending on how you allocate it, that is possible.

Senator KERRY. Is that acceptable?

Mr. MENDEZ. Now, I will answer your question this way. The 1007(h) study, which is also called the Lillisand study—the original proviso in the Lillisand study used migrants, the high month in each State, as the basic funding point. They did not use the overall yearly total of migrants in the State, or the migrant months in the State.

Let me sort of give you an example. In Colorado, in June and July, we have approximately 30,000 migrants. But in November, December, January, and February, it is negligible. The rate was funded at the 30,000 level. They annualized the high month. Now——

Senator **Kerry**. Well, I do not mean to interrupt you, but what I really hear you saying—and you can correct me if I am wrong, and I am not trying to debate you on it—but what I really hear you saying is that by some sort of statistical legere de main, we are getting a lower number of what we need to sort of justify it, but the reality is that 20 out of 34 are not going to get the service.

What is the reality?

Mr. **Mendez**. Senator, the reality is this. Presently, 40 percent of the funding is going to 60 percent of the States where the lowest number of migrants are. The base States—California, Texas, Florida—receive 40 percent of the funding and have 60 percent of the migrant total.

Senator **Kerry**. That is how it is being divided. That is how the money is being distributed.

Mr. **Mendez**. That is how, presently.

Senator **Kerry**. But that is neither an answer to my question, nor a resolution to the problem.

Mr. **Mendez**. Well, may I——

Senator **Kerry**. The question is, if 20 out of 34 people are out there, not getting services, being cut from it, is that acceptable? Is that within the mandate of advocacy for Legal Services?

Mr. **Mendez**. May I——

Senator **Kerry**. Would you answer that—is it?

Mr. **Mendez**. Senator, the fact that migrants are fluid means that if we put the money in those three base States that there is substantial probability that we will hit almost all of the migrants by putting them in the base States and not in the stream States.

Senator **Kerry**. And so?

Mr. **Mendez**. And so, I personally believe that we will probably get more migrants and have more moneys for migrants, and be able to represent migrants more and better, by increasing the funding in the base States than by putting them in the field programs in the various States up in the Northern part of the country.

Senator **Kerry**. How will you be able to measure that?

Mr. **Mendez**. Senator, we have the number of cases that you open, the number of people that you touch, the average that you perform—the statistics are there, and it is very apparent. And I believe that even Mr. Nagler, when he came in and testified before us, indicated that he believed in the statistics of the Lillisand project.

Senator **Kerry**. How long will it take you to be able to get a measurement of the impact of this cut?

Mr. **Mendez**. Assuming that we can readjust the funds within the line item, it would take 1 year to do that, because we would have to have 1 year of studies to have a measurement as against the prior years.

Senator KERRY. Are you going to do that?

Mr. MENDEZ. Senator, can you tell me if I am going to be confirmed?

Senator KERRY. No, I can't.

Mr. MENDEZ. If I am confirmed, I will state to you that I will do that.

Senator KERRY. If you want to get hypothetical, assuming that you are there and on the Board, and the Board is operating, is it your intention to make that measurement and to submit to this committee your evaluation of the impact?

Mr. MENDEZ. Yes.

Senator KERRY. And if that impact is negative, would you request the reinstitution of that funding?

Mr. MENDEZ. Of course.

Senator KERRY. You will?

Mr. MENDEZ. Sure.

Senator KERRY. Now, how many migrants are there in the country; do you know? I mean, what are you estimating, what are you making as your starting statistic?

Mr. MENDEZ. On that, there is a big argument. It ranges from 226,000 to about 1.4 million.

Senator KERRY. The range is from 226,000 to 1.4 million.

Mr. MENDEZ. Yes.

Senator KERRY. I understand you visited the Census Bureau in an effort to try to find out—what did you learn with respect to that?

Mr. MENDEZ. The Department of Agriculture places it at 226,000. The Census Bureau states that—they do not break it out specifically, but that there are approximately 1.3 million farm workers, and they have not made a determination as to what the ratio of migrants is to farm workers.

My personal belief is that there is somewhere in the neighborhood of 200,000 to 300,000 migrants. I have a twofold basis, that history is indicating that the migrant farm worker population is decreasing, and also, Senator, the statistics indicate that there is a substantial number of migrants who are Hispanic, somewhere in the nature of between 60 and 70 or 80 percent, and I look at my own past history of practice, and I see that in my own practice, the migrant population is decreasing.

Senator KERRY. Does the Census Bureau have an estimate of how many migrants they are not able to count? Did they have an estimate of how many they miss?

Mr. MENDEZ. There is an overall estimate; they missed approximately 1 percent of the overall population. Senator, for the Anglos, they missed less; for the blacks, they missed approximately 4 percent; for the Hispanics, they have missed approximately 7.6 percent. And within those categories, that is the——

Senator KERRY. They did not tell you that they miss blacks and Hispanics at a rate as high as 18-percent?

Mr. MENDEZ. No, they did not tell me that, not that I recall, and I have some documentation that confirms——

Senator KERRY. Do you disagree with that 18 percent figure?

Mr. MENDEZ. Senator, it does not make any difference in terms of the overall funding request, because if they missed 18 percent, that means that they counted 82 percent of them, which would be double funding on those particular individuals.

Senator **Kerry**. Mr. Wallace, if I may ask you, would you tell me what, in your view, is the meaning of, quote, "full access under law to comprehensive and effective legal services"?

Mr. **Wallace**. I am not sure what you are quoting from, Senator, but I think I know what you mean. It is not language that appears in our act.

Senator **Kerry**. You have no sense of that—what does that mean to you?

Mr. **Wallace**. Well, I can try to tell you what it means. "Full access to comprehensive legal services"—is that the phrase?

Senator **Kerry**. "And effective."

Mr. **Wallace**. "To comprehensive and effective legal services." It sounds like it means that people ought to have all the access they want to all the legal services there are, to be done in an effective manner.

That is not the language of our act.

Senator **Kerry**. But do you think that is an appropriate standard?

Mr. **Wallace**. If it is an appropriate standard, Senator, I do not quite know how we would go about carrying it out. I have been reading Mr. Houseman's and Mr. Docley's "History of Legal Services," and at one point, they say that what legal needs are is limited only by the creativity of lawyers who can think up new lawsuits to file. The "creativity" I know is their word, and the rest of it may be a paraphrase.

Now, I think the creativity of lawyers is largely boundless. I do not think that Congress or the American people want to give full funding to the boundless creativity of lawyers. I think Congress and the American people want to see to it that the basic legal needs of people, the kind of legal needs that ordinary Americans have and can pay a lawyer to solve, they want to see that those needs can be solved for the poor people as well.

That is what I think Congress set the Legal Services Corporation up to do, to give poor people the kind of access that ordinary, middle-class Americans have to basic legal services. I think that is what the act says, and I certainly support that.

Senator **Kerry**. Well, you are certainly familiar, aren't you, in principle, with where that language comes from, aren't you?

Mr. **Wallace**. No, I am not. That is why I asked you.

Sentaor Kerry. You are not familiar with that?

Mr. **Wallace**. No.

Senator **Kerry**. Would you characterize yourself as approaching this nomination confirmation with a sense that you are fully committed to the fundamental concepts of what the Congress intended in creating Legal Services?

Mr. **Wallace**. Yes.

Senator **Kerry**. You are; but you are not aware that in the Senate committee report, when the Congress passed the Legal Services Corporation, that that report said that the Senate should be given the assurance that the Board members fully understand and are fully committed to the role of legal assistance attorneys, and support the underlying principle of this legislation that it is in the national interest that the poor have full access under law and comprehensive and effective legal service.

Mr. **Wallace**. OK. Now I remember that language. That is the language that Senator Eagleton quoted 2 years ago when we were last back here.

I believe that Congress states its purposes in legislation. I have read the act; I am fully in accord with the act, and I support the purposes of the act. I have not read the committee report from 1974, and I am not prepared to tell you what the committee report from 1974 says or what it means.

Senator **Kerry**. What about the concept? What about the concept? I mean, I hear you disagreeing with the notion that full access and effective representation means that you should allow a lawyer to be creative.

Mr. **Wallace**. If, in that committee report, the committee staff thought it was restating what Congress had adopted, in section 101, sub 1 of the act, "There is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;" if what you said in the committee report means the same thing as what Congress said when it passed the law and what President Nixon meant when he signed it—then I support that. You asked me to define those words out of a vacuum, and I gave you what it sounded like those words meant to me. I do not think Congress, or President Nixon, or anybody that supported the appropriations bills since then intended to give full and unlimited funding to the creativity of lawyers. If they did, they would have made it an entitlement program like Medicare, where any need anybody has, they go, and it gets paid for. Congress has not created this as an entitlement program. It is a more limited program, and I think what it intends to do is to serve the needs that I decribed a few minutes ago—the basic needs of individuals.

Senator **Kerry**. Do you see any conflict between that concept and the equal protection clause?

Mr. **Wallace**. No.

Senator **Kerry**. Can you be more specific about how you distinguish those concepts?

Mr. **Wallace**. The Supreme Court has said time and time again that wealth is not a suspect classification under the equal protection clause.

Senator **Kerry**. That is not what we are talking about. We are not talking here about that. We are talking about whether or not, once you have stated a principle that someone will have an attorney, you will place limitations on the avenues of redress that attorney can seek, which means you have one kind of representation, one quality of legal service for one class, and another quality of legal service for another class—don't you?

Mr. **Wallace**. Well, I think you are changing the question.

Senator **Kerry**. Without even getting to the issue of suspect classification.

Mr. **Wallace**. You are changing the question, I think, back to the one you asked Chairman Durant and Mr. Mendez, of what a Legal Services attorney ought to be free to do when he has a client. And of course, Congress has placed limitations on that.

In my Committee—I am Chairman of the Regulations Committee—we just finished a series of hearings on our regulations on priorities. One of the objections that people in the field had to that language was that it said boards of directors were supposed to set up guidelines to give levels of representation to clients. Now, the field did not know what that meant, and neither did I, quite frankly.

I said in those hearings, and I will say here that either you have a client, or you do not. If you have a client, you give him the representation he needs. That is a lawyer's ethical responsibility, and that is what is provided for under the act. I think that is clear. I amended—my Committee amended, and I think the Board will adopt when we get to it—language deleting that level of representation language from the priority regulations, because we believe if you have got a client, you represent your client, period.

Senator KERRY. As a Board member, are you intending to advocate for an annual budget request which would achieve the goal of providing I think it is two attorneys for every 10,000 poor persons in the country?

Mr. WALLACE. I am not sure. One of the things I have tried to learn since I came on the Board is where that goal came from. I do not know whether that is an appropriate goal. Maybe we need three. And I am not sure how much two attorneys would cost.

Staff submitted some data——

Senator KERRY. Well, as a minimum—I mean, do you think that is unreasonable?

Mr. WALLACE. Well, it may be that given the new forms of representation that Chairman Durant has been talking about and the Corporation has been promoting, that that number may be obsolete. If we have got plenty of lawyers out in the field, donating their time, we may not need to pay two for every 10,000.

I do not take that as a magic standard that we have to aspire to. We need to come up with the money to get the job done, within the limits of what the American taxpayers are willing to pay.

So, no, I do not endorse that standard as a magic mark, but I do intend, within the same framework that Chairman Durant and Mr. Mendez have been talking about, to support necessary funding for this Corporation.

Senator KERRY. Now, in your home State, as you well know, Legal Services have been traditionally involved in what have been some controversial issues on behalf of poor people. And I wonder, based on some of those examples, if you believe that Legal Services should represent clients, for instance, in utility rate cases—should they?

Mr. WALLACE. I have no problem with that.

Senator KERRY. How about challenges to jail conditions?

Mr. WALLACE. I have no problem with that.

Senator KERRY. Redistricting cases?

Mr. WALLACE. I have litigated against them in redistricting cases, and they did a good job. I have no problem with that.

Senator KERRY. Class actions against the Government?

Mr. WALLACE. If that is the best way to serve the needs of the client, that is what a lawyer ought to do.

Senator **Kerry**. So you would not seek curtailment or restriction with respect to any of those categories?

Mr. **Wallace**. I have no intention to seek curtailment, but we have not done a full monitoring of the field. I do not believe that those were the primary types of cases that Congress thought it was funding when it set up this program.

If, when we monitor the field, we find out that child support, wife-beating, consumer fraud, the garden variety cases that I think most people in Congress are trying to address—if we find out that those are being neglected in favor of those types of cases, then we might need to take some curative steps. But as a matter of principle, Senator, I have no reason to say that those things ought to be off-limits.

Senator **Kerry**. Well, I would like to get some kind of assurance from you that, since you agree that those are worthy areas for representation, that rather than make curative steps by cutting them, you would make curative steps by requesting that we provide additional funding so we can cover those other areas.

Mr. **Wallace**. Congress has provided additional funding for all of those areas through the Civil Rights Attorneys' Fees Act of 1976, I think it is, and every one of those actions that you have described, the State of Mississippi pays for through the nose when those suits are filed and they are lost.

So I am not sure that Congress, having set up a bounty statute, at the end of the suit ought also to be putting up the front money at the front of the suit——

Senator **Kerry**. Well, regardless of what means are taken to find funding, would you at least commit that you are not going to seek to curtail those areas as available avenues of representation?

Mr. **Wallace**. I have no intention to seek curtailment, no.

Senator **Kerry**. Well, "no intention"—your "intention" could change tomorrow.

Mr. **Wallace**. Yes, sir, it can. I have been on this Board for 4 months, and I learn new things every day. I expect to be here for 3 years, and if I learn something to change my mind, if I believe there are serious abuses in this area, I intend to do what I think Congress wants me to do.

Senator **Kerry**. So, you are not telling me—well, wait a minute, now. Apart from what the Congress tells you to do, you are a potential Board member who has got to make decisions about what you are going to recommend to the Congress.

Mr. **Wallace**. That is why I am telling you I am not going to make an ironclad commitment about what I may learn over the next 2 years, Senator. I will exercise my judgment in good faith, consistent with what I believe the law to be, and that is it.

Senator **Kerry**. I respect that, and I am sure you will. I have no doubt about that. The question is not one of judgment about what the law is or should be. The question is about your personal commitment to these as areas that are worthy of being represented, that you would fight to keep. And I would like to know whether you care enough about them that you are going to fight to keep them. What is it that could change your mind about whether or not challenges to jail conditions ought to absolutely be guaranteed? What is going to change your mind about that?

Mr. **Wallace**. The main thing—and I see Chairman Mendez, who knows where our money is going, trying to jump in—the main thing, it seems to me, is priorities. What is going to change my mind is that this is not an entitlement program, Congress does not provide an unlimited blank check for all the suits that lawyers can think of. If I come to the conclusion——

Senator **Kerry**. No, that is not my question, Mr. Wallace.

Mr. **Wallace**. But that is my answer, Senator.

Senator **Kerry**. What is your priority? Is that a priority?

Mr. **Wallace**. No, sir. My priority is child support, wife-beating, consumer fraud—the kinds of problems that ordinary Americans face and that ordinary Americans pay lawyers to resolve. I think those are Congress' priorities. And if those priorities are being neglected for other things, then I think that is a mistake.

Senator **Kerry**. Well, wife-beating, child abuse, and most of the things you have just listed fall under our current Criminal Code, and most of them are available under victim witness programs and under various court appointment processes and diversion programs in the criminal justice system.

Mr. **Wallace**. Goodness, Senator. I do not know how it is in Massachusetts. I have not lived there in about 10 or 12 years. But it is difficult to get district attorneys in most places to pay attention to domestic violence as a criminal matter. That is why shelters have been set up; that is why we are here.

Senator **Kerry**. I said through diversion programs. I will agree with you that the primary route of resolving those issues is not, hopefully, through the actual final implementation of court proceedings, but by and large, those cases are often resolved because you have the sledgehammer of the imminent court proceeding hanging over you, and so you can get people into either counseling or diversion programs and other kinds of things.

But the point is, it seems to me, that there is an available avenue to deal with that which does not require legal services funding. Therefore, I do not understand why you would want to turn away from something which it seems to me is an area as difficult as trying to adequately represent people with respect to jail conditions or other conditions where very few people are going to turn around and help them.

Mr. **Wallace**. Senator, there are other avenues to deal with reapportionment and jail conditions and all the things you have said. They are called elections.

Senator **Kerry**. For poor people?

Mr. **Wallace**. Poor people vote.

Senator **Kerry**. I beg your pardon?

Mr. **Wallace**. Poor people vote. I mean, I am not arguing with you that those are important. They are important. You are asking me is that going to be one of my foremost priorities in distributing the limited funds that Congress provides for. I will tell you, I am not going out of my way to cut them off. I am telling you they are not my chief priorities. I have told you what my chief priorities are, and I think they are Congress' priorities.

Senator **Kerry**. What are your views about which method of delivering legal services is best—and this sort of leads into it from what you have just said—contract, staff attorney—how do you feel about that?

Mr. **Wallace**. I think that different methods are useful in different ways. From our Northern Virginia District Office, we did a study on private attorney involvement—Marjorie McDrarmed, I think her name was. She found that private attorneys in pro bono projects will take particular types of cases, and staff attorneys take other types of cases. Primarily, private attorneys will work on things that they do for ordinary paying clients. Those will tend to be domestic matters, in many respects; there are probably a few others like that. Staff attorneys work best on legal issues that ordinary practitioners do not see—AFDC, Food Stamps, various other programs that the middle class just does not deal with.

You obviously need staff attorneys to deal with those areas where private attorneys do not have the expertise. On the other hand, in areas where private attorneys do have the expertise, pro bono and even judicare, especially in rural areas, may be the most cost-efficient way to do the job.

So I do not think there is one best delivery system, but those are the kinds of distributions of talent that I think probably work best.

Senator **Kerry**. Thank you very much, Mr. Wallace. I appreciate that.

I have some other questions, Mr. Chairman, but I am not sure what the procedure is here. I understand this was called essentially for those of us who were not able to be here, but I do not want to take time if other members——

The **Chairman**. We do have 2 weeks, Senator; if you would care to submit questions in writing, we will make sure that the individual Board members have those responses back.

Senator **Kerry**. What was your intention with respect to the time frame on this?

The **Chairman**. To have a markup within the next 2 weeks.

With regard to today, I would like to finish as soon as we can. I am already half an hour late on my schedule. But I do want to accommodate members of the minority.

Senator **Kerry**. I appreciate that very much, Mr. Chairman.

If I may, I would just like to ask one other quick set of questions, and then some of you will escape for the moment.

If I may, I would like to ask Mrs. Bernstein a couple of questions. Now that you are at this point in time a member of the Board of Directors, you obviously have a responsibility for setting policy. And the Board has addressed a few issues about the future at Legal Services Corporation. I am interested in your personal views, perhaps, as distinct from the majority statement of the Board members.

The Board adopted a 1986 appropriation now of the $305 million. And yet, you made a motion for the $241 million. And you justified that with some statements that were very critical of what is known as the Weicker amendment, or series of amendments, actually, which were set in place to guarantee current grantee funding levels. And I would like to hear personally, because I have not heard it, and I am not aware of it—I would like you to restate your justification for that $241 million, which is a 21-percent reduction, and specifically, reiterate your objections to the Weicker amendment.

Mrs. BERNSTEIN. When I made the motion at the Board meeting, Senator, I knew that there were not going to be enough votes on the Board to carry it. However, at that time, I thought it was important to get the issues on the table regarding the meaning and the purpose of this program and for us to think about the issues underlying the program, as well as thinking about a funding level. And I think stimulating debate is something that is important not only in the Senate, but in boards and commissions such as the one that we are on.

One of the things that I find laudable about the Legal Services Corporation Act is the political independence, in terms of its structure of the Board.

The reason that I had concerns, and I have concerns, about diminishing effects on that independence is because I think that—and you asked for my personal view—my personal view is that we have no constituency as Board members other than the clients. And to the extent that we make any decisions without that being our major concern, then we are looking at the wrong issue.

Direct delivery is something that I have continually emphasized. I feel most comfortable with the most dollars being channelled directly to the client. I feel most comfortable with the clients making the decisions as to what kind of representation they are going to have.

Senator KERRY. Well, let me just understand correctly, then. You say you made the motion really to air the issue; is that correct?

Mrs. BERNSTEIN. That was one of the reasons I made the motion, yes.

Senator KERRY. What is another reason? Are there others?

Mrs. BERNSTEIN. Well, to air that issue, but also to air the issues of what we are actually spending money on. We have to answer "I don't know" to this committee and to other committees in Congress; I am uncomfortable with that. And I think as Board members, as fiduciaries, as independent trustees of the Federal dollars, I think we have got to be able to answer it.

We cannot afford a $9,000 wrench in this program any more than we can afford it in the Pentagon.

Senator KERRY. And you do not think it is possible to raise that issue or to set up a process by which you make judgments about how the dollar is being spent, without proposing a cut to 241?

Mrs. BERNSTEIN. I think that when we have scarce resources, when we talk about diminishing budgets, then people start talking about what is really important and where are our priorities.

And this does not mean that there are ample legal services being provided now. What my concern is, though—and I do not know whether you were in the room when I answered this question before this morning—but it is my concern that we have an answer to what it is being spent for and where the money is going, and then I will be glad to come back to Congress—and I said this at the meeting—I will be glad to come back to Congress and ask for a supplemental appropriation, if I am shown that that is required and I can feel comfortable.

Senator **Kerry**. I am curious, I suppose, about why, if it was really an inquiry for the purposes of making a judgment, you brought it to a vote. Why did you move to bring it to a vote?

Mrs. **Bernstein**. I guess, just parliamentary procedure. I mean, this is the way things happen on our Board, that we put issues on the table, and unless the issue is being debated for the purpose of voting——

Senator **Kerry**. Well, if it was voted on appropriately, you, in fact, become the advocate of a cut, not the tester of how you are spending money.

Mrs. **Bernstein**. And I think that there are bills that are probably presented in Congress for the purpose of stimulating debate.

At any rate, that is my answer.

Mr. **Durant**. Mrs. Bernstein did support the 305 motion for funding.

Senator **Kerry**. Subsequently.

Mr. **Durant**. Yes.

Senator **Kerry**. I understand that.

Well, I do have other questions, and I would like the chairman's permission—I do not want to go on simply—I do want to go on, but I do not want to, in the circumstances of recognizing that we were considerably late in being able to begin, and I was late in getting here. And I am very appreciative of the Chair's indulgence in even remaining overtime, and I do not want to abuse that.

So I would like the Chair's permission to at least be able to submit those additional questions. And, for those of you who were not able to answer any questions, I know you are dying for my apology for that.

Might I, however, Mr. Chairman, just in closing say to these members—and I do not know how I will vote on all of you or any of you yet; I would like to sit down and make that judgment. But I would just like to make the statement—and I hope it does not fall on deaf ears, and I recognize political exigencies and other things that will come to bear in the future on all of you. But it seems to me that, while yes, there can be nuisances, and yes, there are harassments, and yes, indeed, the system can sometimes get confounded and tied up, and it seems as though value can be put to test in many ways, I would hope that each of you, should you be approved and ultimately serving in the non-recess posture on this board, will really think hard about the larger values that are at stake in what is represented in Legal Services.

And I do not want to sound sanctimonious, and I do not want to sound pompous or anything in saying this to you, but I think there is a much larger value and much more important message and a much more important goal that is achieved by the provision of full and effective, comprehensive legal services, even when some of those things may tread on areas that somehow seem to reach too far. I think that larger values is a whole, significant portion of what this Corporation is and was meant to be, and the message that it carries to disenfranchised and to powerless and to others who have very little voice in our society rises far above the consequences of some of these harassments and nuisances.

And I hope that as you proceed, you will really think hard and very seriously about that.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Kerry.

We will keep the record open until 6 o'clock today for any member of this committee to submit written questions. We would like the answers submitted immediately, hopefully, by the end of this week, so that we can proceed as we have agreed on this committee in good faith, to produce a quorum in two weeks and vote on your nominations one way or the other.

Senator Kennedy, we will turn to you.

Senator KENNEDY. Thank you, Mr. Chairman.

I want to first of all express my appreciation to you, Mr. Chairman, for holding these hearings, to give an opportunity to inquire of these nominees, particularly our newer members to this committee, because this is a program of enormous importance and consequence to millions of citizens in this Nation who otherwise would not have access to the judicial system in our country.

I know earlier today, we were all being pressed by various responsibilities. I regret that I was not able to be here at the opening of the hearing. I was testifying on the Foreign Relations Committee, where Senator Kerry and Senator Dodd were present, as well as Senator Pell, and the Judiciary Committee, where Senator Simon is also very interested in this, but also had a meeting. I know that he wants to inquire of these witnesses, and I understand that he will be permitted to ask questions

So, I want to thank you, and understand the earlier frustration in not having the attendance here earlier today. I did want to mention where some of our colleagues were at the outset of these hearings, and I am aware that you are already late for your next meeting.

I would like to submit questions to the various board members. I had a series of those, but I will welcome written responses to them.

The one matter I do want to raise, since there has been a good deal of talk about the priorities and the allocations of resources, I do want to raise the funding of some of the support centers, which have been written about. I believe the members of the panel would know about them. They have followed, as I understand, rather a different track in terms of the funding for those particular centers. There are some three different centers—the Center on Constitutional Law, Cumberland, MD; the National Center for the Medically Handicapped of Indianapolis; and the Urban Legal Foundation.

As I understand the procedure in funding those centers, they were outside of the procedures that have been the accepted procedures within the Legal Services organization.

Chairman Rodino of the House Judiciary Committee requested the GAO to do a study about the funding of those programs, and I would like to just include that report in the record of today's hearings.

Just to mention some of the summary conclusions, the Legal Services Corporation did not provide the prior public notice of the three national support centers; after the grant awards, LSC provided public notice and solicited comments on the three grants; the LSC did not perform a needs assessment study or evaluate the legal assistance priorities identified by the local Legal Services programs or solicit proposals from existing national support centers or

Legal Services programs; the LSC funded the three grants from budget categories unrelated to national support centers.

In other words, in these particular centers, they followed a completely different route in funding those centers than the generally agreed-upon procedures.

I do not know whether Mr. Durant wants to address that report or those comments that I have just read.

Mr. DURANT. Senator, I would be glad to do so. Two things, I think——

Senator KENNEDY. Just briefly, please, and trying to accommodate our time constraint.

Mr. DURANT. I will be very brief. No. 1, the awarding of those grants occurred before this Board was appointed. Those occurred in September of last year. We were not recessed until late November of last year.

I have reviewed the GAO report, and the Corporation will monitor and review those grantees, as it will all of its grantees, to make sure that the appropriate rules and regulations are followed.

It is my understanding that, even on some of our existing support centers, the proper procedures highlighted by the GAO were also not followed. I think it is important that whatever our policy is, that it be consistent. We are looking into making sure that that is so.

Senator KENNEDY. Well, are you suggesting that some of the existing members that are here today were not aware of this request, or involved in any way with the decision to support those centers?

Mr. DURANT. Well, I know that——

Senator KENNEDY. Let me ask Mrs. Bernstein.

Were you at the conference that was held——

Mrs. BERNSTEIN. I was at the conference in Chicago, but my role at the conference in Chicago was to discuss the preliminary findings of the NORC (National Opinion Research Center) report, which was a study that the Corporation had financed regarding the support needs of local programs and what they perceived their support needs to be. That was my function at the conference.

Senator KENNEDY. Is that the only association you had with these requests at all? Is that the only time that you were knowledgeable about these various requests?

Mrs. BERNSTEIN. I did not know that there was a grant request or grant application from either of these centers until I was told by a Corporation staffer, and I think it was after I left the Corporation. It came up just in a casual conversation that some grant proposals had come in.

I left the Corporation in July of 1984, and my capacity there was closed out within about 4 weeks afterward, and I did not deal with grants. I was in the executive office, dealing with administrative and organizational kinds of things. I had been involved with policy discussions, but the question of new grants for support had not come up in those policy discussions.

Senator KENNEDY. So I understand that you had no involvement or participation in urging the funding for these three centers?

Mrs. BERNSTEIN. Absolutely not.

Senator KENNEDY. Is that true about the rest of the panel—I do not want to take the time—I will accept silence as as the answer for all.

Mr. DURANT. It is, Senator.

Senator KENNEDY. Let me just ask with regard to the president of the panel, Mr. Durant, when do you expect to have that particular position filled, the new president of the LSC?

Mr. DURANT. Well, we are moving along, and I would hope that we would have it filled sometime in June or July.

Senator KENNEDY. How long have you been looking for one?

Mr. DURANT. Well, we began the search process by setting up the search committee at our last meeting in December. Claude Swafford was made Chairman of the Presidential Search Committee. We put a substantial amount of advertising in a number of different periodicals, and we received in excess of 200 applications. The committee is reviewing them.

Certainly, it is important that we reach that decision, but we also know that we should reach it with care, and that is what is happening.

Senator KENNEDY. Well, I would hope that we could get that issue—I understand that there are a number of very qualified people whose names have been submitted—and that we can get, as you point out, a decision on it that reflects adequate consideration, but hopefully, that process can be completed expeditiously.

I will submit my other questions, Mr. Chairman. I thank you for holding these hearings. I know we have agreed to try and get a markup on these nominees within the next couple of weeks, and we will certainly make every effort to assure that the committee is going to be able to act.

Mr. DURANT. Senator Kennedy, I would also like you to know that I was in Boston on Thursday and Friday, looking at some of the programs in the city. I was very impressed by a number of the activities there. It was a very productive 2 days' work.

Senator KENNEDY. Good.

The CHAIRMAN. Well, thank you, Senator Kennedy.

Senator Pell, do you have any remaining questions?

Senator PELL. No.

The CHAIRMAN. Then with that, we are grateful to all of you for being here. I think Senator Kerry asked a lot of searching questions, and I think there were very interesting and very good answers given to those questions.

[At this point in the record we will insert the completed presidential questionnaires and responses to questions subsequently submitted to each nominee.]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: DURANT III (LAST) WILLIAM (FIRST) CLARK (OTHER)

Position to which nominated: BOARD MEMBER, LEGAL SERVICES CORPORATION

Date of nomination: OCTOBER, 1983

Date of birth: 13 (DAY) 05 (MONTH) 49 (YEAR)

Place of birth: DETROIT, MI

Marital status: MARRIED

Full name of spouse: SUSAN ELIZABETH SPARKS DURANT

Name and ages of children:

HOPE ELIZABETH DURANT: 7 YEARS

MARGARET ANNE DURANT: 5 YEARS

THOMAS CLARK DURANT: 3 YEARS

JOHN LATHROP DURANT: 6 MONTHS

Education:

Institution	Dates attended	Degrees received	Dates of degrees
GROSSE POINT UNIVERSITY SCHOOL (NOW CALLED UNIVERSITY LIGGETT SCHOOL)	1960-1967	High School Diploma	
TULANE UNIVERSITY	1967-1971	Bachelor of Arts	
UNIVERSITY OF NOTRE DAME LAW SCHOOL	1973-1976	Juris Doctor	

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement:

Law Review, University of Notre Dame

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
Michigan Bar Association		5/76-Present
American Bar Association		5/76-Present
Detroit Bar Association		5/76-Present
Michigan Trial Lawyers		1980-Present
American Trial Lawyers		1980-Present
Witenagemote		1980-Present
Economic Club of Detroit		1983

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1. Summers of 1967 & 1968: Downtown Garage, Supervisor D
Smith, corner of Cass & Congress, Detroit, MI, pump gas,
cars.

2. Summer of 1969 & 1970: Tulane University Campus, New O
LA, School projects

3. 6/71-9/71: Foundation for Economic Education, Supervis
Irvington, NY
Ass. Dir. of Seminar, Summer job

4. 9/71-12/71: U.S. Army, Transporation Corps, Active Dut
Ft. Eustis, VA

5. 1/72-8/73: Hillsdale College, Hillsdale, MI, Ass. to P
then Vice President

6. 9/73-5/76: University of Notre Dame, South Bend, IN,
pupil

7. 9/75-6/76: University of Notre Dame, South Bend, IN,
teacher

8. 6/76-Present: Durant & Durant, P.C. (Formerly Durant
Detroit, MI Attorney

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Feder
State, or local governments other than those listed above.

Consultant, National Council on Education Research;

current but intermittent

Published writings: List the titles, publishers and dates of books, articles, reports or other published materia
you have written.

NONE

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendere
all political parties or election committees during the last five years.

I am a registered Republican. I am currently serving
two-year term as a precinct delegate. I have done som
telephoning, some fund-raising, and some canvassing fo
the Reagan/Bush effort in 1980 as well as on behalf of
Dick Headlee who ~~is~~ was running for Governor of Michigan.
I don't recall my financial contributions, but I have
given anything over $150.00 to any political candidate

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, busines firm, association or organization if you are confirmed by the Senate.

Not unless a conflict of interest is apparent or devel
or unless such is required by law.

2. State whether you have any plans after completing government service to resume em ployment, affiliation or practice with your previous employer, business firm, associa tion or organization.

See answer to No. 1.

3. Has a commitment been made to you for employment after you leave Federal service

No

4. Do you intend to serve the full term for which you have been appointed or until the nex Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other con tinuing financial, business or professional dealings with business associates, client or customers who will be affected by policies which you will influence in the positio to which you have been nominated.

None that I am aware of

2. List any investments, obligations, liabilities, or other financial relationships which con stitute potential conflicts of interest with the position to which you have bee nominated.

None that I am aware of

3. Describe any business relationship, dealing or financial transaction which you have h during the last five years whether for yourself, on behalf of a client, or acting as agent, that constitutes a potential conflict of interest with the position to which y have been nominated.

None that I am aware of

4. List any lobbying activity during the past 10 years in which you have engaged for th purpose of directly or indirectly influencing the passage, defeat or modification of a Federal legislation or of affecting the administration and execution of Federal law policy.

A. Was retained in 1981 to represent a client at the Department of Housing and Urban Development. I am no longer doing any work for that client.

B. I was retained by a client to work with the Unite States Post Office regarding litigation over a particular post office. The litigation has been settled and the Post Office is no longer involved.

C. As Trustee of Michigan Interstate, a railroad in reorganization, I contacted the General Counsel's Office the Department of Transportation to discus the application of certain sections of the Bankru Code. Also discussed with my counsel the modification of the Code in sections effecting ra road reorganizations and the Trustee. No action t taken.

5. Explain how you will resolve any potential conflict of interest that may be disclosed your responses to the above items.

I will attempt to resolve any potential conflict of i in the best possible way so that my judgment as a Boar Member of the Corporation will not be affected.

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202)

April 26, 1985

The Honorable Orrin G. Hatch
Chairman
Senate Committee on Labor and
   Human Resources
SD 428, United States Senate
Washington, D.C.   20510

Dear Senator Hatch

Enclosed are my responses to the questions submitted by Committee Members as a follow-up to the Committee's Confirmation Hearing on April 24, 1985.

Sincerely,

William Clark Durant, III SS

William Clark Durant III
Chairman, Board of Directors

Enclosure

Questions from Senators Kennedy, Dodd, and Kerry for William Clark Durant

1. DO YOU THINK THE NEW LSC PRESIDENT MUST HAVE A COMMITMENT TO THE POOR AND TO LEGAL SERVICES FOR THE POOR WHICH HAS BEEN DEMONSTRATED BY PREVIOUS INVOLVEMENT IN POVERTY PROGRAMS OR LEGAL SERVICES?

   The president must have a commitment to the provision of legal services to the poor. However, demonstration of that commitment by previous involvement in poverty programs or legal services is not automatically required, but certainly would be taken into account.

2. DO YOU THINK THE LSC PRESIDENT SHOULD HAVE EXPERIENCE IN AND KNOWLEDGE OF LEGAL SERVICES PROGRAMS FOR THE POOR?

   This would not be a requirement, but I would certainly consider such experience and knowledge along with a number of other factors.

3. HOW IMPORTANT TO YOU IS IT THAT THE NEW PRESIDENT BE CAPABLE OF GAINING THE CONFIDENCE OF THOSE WHO WORK IN THE FIELD OFFICES OF LSC PROGRAMS?

   Very important.

   a. WHAT TRAITS DO YOU THINK AN APPLICANT MUST HAVE IN ORDER TO WIN THAT CONFIDENCE?

      A willingness to listen and learn.

4. DO YOU SUPPORT CONTINUED FEDERAL FUNDING OF LEGAL SERVICES?

   Yes.

5. WHAT LEVEL OF FEDERAL FUNDING DO YOU THINK IS NECESSARY TO MAINTAIN CURRENT SERVICE LEVEL IN FY 1986? FY 1987? AND FY 1988?

   I support a $305 million request for FY 1986. I have not yet addressed this question of what our requests will be in the future.

6. NOT WITHSTANDING ANY RESTRICTIONS CURRENTLY PLACED ON LEGAL SERVICES PROGRAMS, WHAT DO YOU PERSONALLY BELIEVE IS THE APPROPRIATE ROLE OF LEGAL SERVICES LAWYERS IN SERVING THEIR CLIENTS? IF YOU COULD START FROM THE BEGINNING AND FORM A NEW LEGAL SERVICES PROGRAM, WHAT WOULD YOU DO?

   A lawyer ought to be bound by the Code of Professional Responsibility, the Statute as passed by Congress, and the regulations promulgated by LSC. I am troubled by government subsidized advocacy on one side of an issue, and I will look to Congress at this time for whatever limits are appropriate.

I have not thought about how to form a new legal services program because I am not in the position to start over. I would certainly think about a program that empowers people to be able to resolve their disputes in the most effective and efficient manner.

Questions from Senator Simon for William Clark Durant

7. ADEQUATE FUNDING -- WILL YOU SUPPORT ADEQUATE APPROPRIATIONS FOR THE CORPORATION, IN AN AMOUNT SUFFICIENT TO PROVIDE THE SAME LEVEL OF SERVICE TO ALL ELIGIBLE PERSONS, ACCORDING TO THE 1980 CENSUS?

   I agree with the following quote: "Those of us who care about domestic progress must do more with less. The mere existence of a program is no excuse for its perpetuation, whether it is a welfare plan or weapons system. The unexamined program is not worth keeping and good intentions cannot redeem bad results." Quote from Senator Kennedy's speech at Hofsta university. Any support for adequate appropriations will depend on such an examination.

8. ROLE OF THE PRIVATE BAR -- WILL YOU RESIST EFFORTS TO SUPPLANT LEGAL SERVICES ATTORNEYS WITH REPRESENTATION FROM THE PRIVATE BAR, UNLESS YOU ARE ABSOLUTELY ASSURED THAT THE QUALITY OF LEGAL SERVICES AND THE COMMITMENT TO LEGAL AID FOR THE POOR WILL NOT BE DIMINISHED?

   I am open to exploring a broad based delivery system. In my public and private remarks, I have recognized the importance of the staff lawyer, my commitment is delivery of legal services to the poor in the best possible manner in whatever shape or form that may be.

9. AREAS OF LEGAL SERVICES ATTORNEYS PRACTICE -- WILL YOU WORK TO ASSURE THE CONTINUED EMPHASIS OF LEGAL SERVICES ATTORNEYS IN THE FOLLOWING PRINCIPAL AREAS OF PRACTICE: FAMILY LAW, HOUSING, INCOME MAINTENANCE AND CONSUMER CREDIT?

   Priorities presently are to be set locally. So long as those areas of practice are reflective of clients' needs and demands they should receive continued emphasis.

Questions from Senators Kennedy, Dodd, and Kerry for William Clark Durant

10. WHAT SPECIFIC NEEDS DO YOU HAVE FOR DISAGGREGATED DATA THAT CANNOT BE MET BY COLLECTING AGGREGATED (SUMMARY) DATA ON CLIENT FILES?

LSC is proceeding cautiously in this matter and a new panel is to be convened. Disaggregated data on services provided to clients provides a fairer and more complete representation of the quality and efficiency of the services to those clients than aggregated (summary) data. Aggregation averages out service operation so that strengths and weaknesses cannot be discerned and used to improve services to clients. Further, aggregation permits only the most approximate relative measures of the quality and efficiency of performance. Hence, this important task of identifying programs that may need assistance in improving the quality and/or efficiency of service delivery is undermined when only aggregated data is presented. Analysis based on disaggregated data would meet the following specific needs:

1) LSC monitoring of service quality and efficiency at the specific case level (versus the program level associated with aggregation). The analysis of the demographic and other data at the case/client level allows for an expedient and effective monitoring method of a specific program, identifying strengths and weaknesses of service delivery for varying clients and case types.

2) The disaggregated data can therefore be used as an effective management tool by local programs, regional offices and the national office to identify and then adjust to any inefficiencies or neglected areas of service delivery.

3) The disaggregated data can also be used as a bellweather for policy analysis and to determine resource allocation at the program level as opposed to a regional or national level.

Attached are the minutes from the August, 1984 meeting of LSC staff and field program representatives outlining the interests of the respective groups in the case service report data and their appreciation of the utility of disaggregated data.

Attachments to Mr. Durant's Answers:

Page 3, Question # 10

LEGAL SERVICES CORPORATION

Summary of CSR Meeting

Attached is a summary of the major discussions which took place at the August 2, 1984 CSR Meeting.

Comments made by participants in response to an earlier draft of this summary are noted in bold type. A list of the meeting participants is attached.

Also included is a proposed "CSR Data Entry Sheet". New fields of information include:

- County - to comply with 45 CFR §1620 - priority setting. A code could be assigned for each county in the country.
- State - programs log this in once, at the beginning of each sheet.
- Accepted, Rejected, Sex - these data items are needed for studies planned by LSC.
- PAI - programs indicate yes or no with a check mark or some other code.

Recommendations made by Participants at the CSR Meeting, August 2, 1984

1. Programs continue to report the four data items currently required for CSR:

    a. Type of case closed
    b. Reason case closed
    c. Ethnicity
    d. Age range

2. Data items (fields) are to be reported rather than the tabulated data currently required by the CSR. LSC will process the data in-house. Reports will be made available to programs and LSC staff. Timely turn around of data by OIM is essential.

3. A new data item, county, will be added. Other data items may be added, but as few as possible. When new data items are added, there must be a very good reason for requiring the information. A "good reason" for requiring additional information is cost/benefit justification.

4. Clarify the CSR definitions, particularly the reasons for case closures. A great deal of ambiguity currently exists in the definitions. Any new data that may be required (i.e. accepted or rejected) must be fully defined.

5. LSC Senior Staff should establish this project as a priority.

6. Using a representative sample of legal services programs, conduct a field test between 10/01/84 and 12/31/84 utilizing this new approach to data collection.

7. Implement new data collection method 1/1/85 on a program-wide basis.

8. The Office of Information Management produces the first quarterly report under the new system 7/1/85.

9. Reasons for changes to the CSR must be throughly explained to the legal services programs prior to implementing this project on a program-wide basis.

10. Re: 45 C.F.R. §1620 - Priority Setting. Closed case statistics will not be the final measure of "reasonably equal access." Note: concern over reasonably equal access is not new. There is a statutory mandate of service in both urban and rural areas. County by county CSR reporting will standardize what has previously been an ad hoc information gathering process. Now that LSC has a definitive statement on reasonably equal access, it is appropriate that a definitive change is made in the information-gathering mechanism.

11. As additional information is required to be reported by field programs, the goal of improving the quality of legal services provided to clients must be kept in mind. Anything we do, such as changes to the CSR, must be for the purpose of allowing us to more effectively manage our resources, and thus provide better quality services to our clients.

Other

The steps outlined above should be put in the chronology in which they will be implemented.

Summary of discussion at 8/2/84 CSR meeting: How the CSR should be changed to meet 45 C.F.R §1620 - Priority Setting Regulation

OFS

1. Do not change the substantive categories of the CSR. Do not favor radical changes in the substantive categories.

2. Current method and format used for reporting CSR data to LSC is not adequate. Reasons why reporting format is inadequate:

   a. For monitoring purposes, untabulated data as submitted by the recipient is more useful than the summary statistics processed by LSC or the service bureau. The recipients' CSR form shows both the type of case closed and the reason for closure. The summary statistics show the total number of cases, broken out first by type of case, and second by reason for closure. Unfortunately, the data when presented in this fashion cannot be cross-correlated. In other words, one cannot tell how the cases of a particular case type were closed. This information is of critical importance in determining the resources committed by a recipient to a priority case type.

   b. The form of reporting is inflexible. Currently, the recipient has to fill out a sheet of paper for each program component. When OFS added PAI reporting, a sheet of paper was added. If county-by-county reporting is added, so many sheets of paper are added that the system is likely to break down. In other words, each time a data item is added the number of sheets of paper increases exponentially.

3. LS programs should continue to report case closures by category, but they should report untabulated data.

4. LSC will process the data and report results back to programs and staff.

5. If LSC processes the data it must be done in a timely manner if it is to be useful.

OTHER LSC DIVISIONS

1. Do not change the type of data currently being gathered and reported by the Field.

2. Additional data items need to be gathered and reported by field programs.

3. Any CSR data gathered is to be limited to case closure information.

4. Field programs report untabulated, unprocessed data to LSC.

5. LSC or a service bureau processes data and generates reports; reports are mailed to the field.

6. L. S. programs report statistics to LSC on a weekly or monthly basis.

FIELD PROGRAMS

1. Do not change the CSR; it may be added to, but not changed. The CSR should not be changed at all; however, if LSC finds it essential to do so, it should be changed as minimally as possible. Any changes made will be costly and time-consuming.

2. Better utilization of CSR data in terms of generating reports, graphics, comparisons, etc. The current CSRs should be utilized to their fullest before any additions or deletions are made to them.

3. Deal with §1620 by asking programs to report the number of requests they receive for services (rejected, advised, closed), by county. Ask for an accompanying narrative to further explain how regulation is being complied with. This narrative can assist LSC in further refining the definition of "access."

4. As a long range goal, add to the type and amount of information being gathered for the CSR.

Summary of Discussion at 8/2/84 CSR Meeting: Information needed by LSC, and Field Programs

NEED	REASON NEEDED
OFS	OFS
1. Case closure information (type case, reason closed), untabulated	1. To monitor programs, i.e., does case activity correlate with stated priorities?
2. Case closures by county	2. To comply with 45 C.F.R §1620 - Priority Setting
Executive Office	Executive Office
1. Rejected Cases - by county	1. For possible use in LSC studies
2. Clearer CSR definitions	2. For more reliable and consistent data
3. Demographics	3. For possible use in LSC studies
OPD	OPD
1. Demographics	1.
2. Time spent by staff on each case	2. & 3. To determine cost and time spent per case. Use data to compare various delivery models.
3. Date of case opening, case closure	
Field Programs	Field Programs
1. Quarterly and annual compilation of CSR data	1. To report to the Board of Directors
2. Comparisons of case activity with other L.S. programs	2. Same
3. How time is spent by staff	3. To determine how a program is allocating its resources

PROPOSED CSR DATA ENTRY SHEET

Page ___ of ___

Recipient Name ______________________________

Recipient LSC #: ______________________________

Period Covered: From ________ To ________ Year ________

Office Location	Accepted	Rejected	Case Code	Close Code	PAI	State	County	Age	Ethnicity	Sex

PARTICIPANTS LIST

Case Service Reports (CSR) Meeting
Thursday, August 2, 1984
10:00 a.m. - 4:00 p.m.

Wayne Barry, Director
Lakeshore Legal Services, Inc.
4 Public Services Facility Building
21885 Dunham Road
Mt. Clemens, MI 48043
(313) 469-5185

John Kemp, Director
Office of Kentucky Legal Services Programs
506 Lexington Building
201 West Short Street
Lexington, KY
(606) 233-3057

Roger McCollister, Director
Kansas Legal Services, Inc.
112 West Sixth Street, Suite 202
Topeka, KS 66603
(913) 233-2068

LSC STAFF:

OFFICE OF FIELD SERVICES

Substantive Research and Support Unit
  Patricia Paquette, Technical Assistance Coordinator
  Judy Opatik Scott, Technical Assistance Specialist

Monitoring and Evaluation Unit
  Paul Reddick, Acting Manager

Grants and Budget Unit
  Gail Francis, Manager

Northern Virginia Regional Office
  Marjorie McDiarmid, Director

Chicago Regional Office
  Maureen Sepkoski, Management Specialist

OFFICE OF INFORMATION MANAGEMENT
Malcolm Slovin, Deputy Director
Audrey Dean, Information Specialist

OFFICE OF PROGRAM DEVELOPMENT
Keith Osterhage, Assistant to Director III

EXECUTIVE OFFICE
Susan Sparks, Staff Assistant

OTHER
John Bahorski, Intern for OPD and OIM

11. DO YOU PRESENTLY SEEK DIRECT ACCESS TO CLIENT FILES AS A PART OF MONITORING OR INVESTIGATIONS?

    As part of monitoring or investigations, access to information on clients' cases is sought to the extent that there is no violation of the attorney-client privilege.

12. HAVE YOU RECONCILED YOUR DEMANDS FOR DIRECT ACCESS TO CLIENT FILES WITH THE ATTORNEY'S DUTY TO PROTECT CLIENT CONFIDENTIAL INFORMATION?

    LSC staff fully reconcile the Corporation's needs for information on clients' cases with the attorney-client privilege protecting the confidentiality of the clients' affairs. Where a client requests an investigation by LSC of how his or her case was handled, a waiver of the privilege is sought where needed. Where Case Service Report information is sought as part of the evaluation of LSC research projects, identification of the client is fully masked prior to submission of that information. The proposed new CSR format being tested for field programs incorporates protections for the privilege. Access to client files for quality-control determinations in monitoring is in consonance with the attorney-client privilege.

13. YOU ARE MOVING FROM A SYSTEM THAT REQUIRES ONE QUARTERLY REPORT FROM EACH PROGRAM (325 REPORTS PER QUARTER) TO ONE MONTHLY REPORT FROM EACH ATTORNEY AND PARALEGAL (7,000 REPORTS PER MONTH). HAVE YOU DONE A COMPREHENSIVE WRITTEN ANALYSIS OF THE TOTAL COSTS OF THESE CHANGES ON LOCAL PROGRAMS?

    To our knowledge, the Corporation has not decided to move from quarterly reports from each program to monthly reports from each attorney and paralegal. CSR data would be maintained on each client, similar to the present data entry done for intake and client handling.

14. DO YOU BELIEVE THAT LSC SHOULD UTILIZE COMPETITIVE BIDDING FOR ALL NEW GRANTS MADE TO PROVIDERS? SHOULD COMPETITIVE BIDDING BE USED FOR ALL REFUNDINGS?

    I think competitive bidding at times is the most likely means by which to get the best product and maximum resources.

Attachments to Mr. Durant's Answers:

Page 4, Question # 12

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LEGAL SERVICES CORPORATION

MEMORANDUM

DATE: January 15, 1985

TO: Pat Paquette, Technical Assistance Coordinator, OFS

FROM: Tim Baker, Assistant General Counsel

RE: Whether the proposed Case Service Report (CSR) proposed data entry sheet is permissible under the Legal Services Corporation (LSC) Act and the Code of Professional Responsiblity.

In a memorandum dated December 4, 1984, you requested an opinion from Dick Bagenstos as to certain questions raised regarding the CSR proposed data entry sheet. Specifically, your questions were;

QUESTION

1) whether the client identifier on the CSR data entry form linked to other information on that form would reveal the identity of the client to LSC or others in violation of the ABA Code of Professional Responsibility; and,

QUESTION

2) whether collecting raw data by LSC violates the LSC Act? In response to your memorandum, the following opinion is being provided.

ANALYSIS

The Office of Field Services (OFS) has proposed revisions to the CSR. Of the several objectives sought by the proposed revisions is the collection of more specific information regarding the services provided by LSC recipients in order to assist OFS in providing more comprehensive evaluations of those services.

The CSR data entry sheet sets forth various categories of infomation regarding each case closed by a recipient. Each particular case is identified by a "Client Identifier" which is defined as a "number assigned by the program to identify the case for program filing and record-keeping purposes." The definition also contains instructions to the recipient that the client identifier column "may be detached from the CSR form prior to mailing to LSC," and that "The program must keep a copy of the form containing the client identifier."

In addition to seeking information on each closed case, such as its type and disposition, information regarding the age, sex, ethnicity and county of residence of the client is sought.

The establishment of CSR data collection process and its current revision is integral to a good faith effort by the Corporation to comply with the mandate of the LSC Act to insure that recipients comply with the LSC Act, Regulations and Guidelines (42 USC 2996e(b)(1)(A)); implement recipient priorities (42 USC 2996f(a)(2)(C)(i)); provide the most economical and effective delivery to persons in urban and rural areas (42 USC 2996f(a)(3)); and provide service to only eligible clients, (42 USC 2996f(a)(2)).

In order to insure that recipients comply with such provisions, the Act mandates that the Corporation monitor and evaluate its recipients (42 USC 2996f(d)). Essential to the monitoring and evaluation process are reports such as the CSR, which the Corporation is authorized to require "as it deems necessary from any grantee..." (42 USC 2996g(a)).

The Corporation's authority to require reports and its ability to monitor and evaluate its recipients is limited in the LSC Act. The Corporation is prohibited from interfering with "any attorney in carrying out his professional responsibility to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association" (42 USC 2996e(b)(3)).

Under the Code of Professional Responsibility (hereinafter the "Code"), an attorney is prohibited from revealing a confidence or secret (DR 4-101(B)(1)). "Confidence" is defined as information protected by the attorney-client privilege under applicable law, and "secret" as other information gained in the professional relationship that the client has requested to be held inviolate or disclosure of which would be embarrassing or likely to be detrimental to the client (DR 4-101(A)).

The prohibitions against revealing client secrets or confidences is not absolute. DR 4-101(c) of the Code sets forth several instances when disclosure is permitted.

In ABA Informal Opinion 1287 (June 7, 1976), there was a departure from the general rule that the names, addresses and telephone numbers of clients are not secrets, and opined that in the case of LSC clients, such items are to be treated as protected secrets unless there is a waiver by the client. This exception was carved out of the general rule on the basis of an assumption that the disclosure of such a LSC client's identity either by name, address, or telephone number might cause that client embarrassment. Because the Informal Opinion is an exception to the general rule it must be read narrowly. The Corporation has scrupulously adhered to this informal opinion by having such items deleted when engaged in routine monitoring. However, this exception has its own limits such as in the event that a specific client is alleged to be ineligible to receive assistance. In that case, it is the Corporation's policy to request access to the financial eligibility records of the named client.

CONCLUSION

The client identifier on the CSR data entry form clearly falls outside the definition of a protected secret. The number which corresponds to a particular client cannot reveal the clients identity to anyone with the possible exception of the staff of the recipient program. The client identifier protects the clients identity whether the recipient chooses to send the client identifier number to OFS or not.

The other information provided on the CSR data entry form such as ethnicity, sex and county of residence clearly has no protection as a secret and the suggestion that its possible linkage together with the client identifier resulting in the disclosure of the identity of the client is ludicrous.

In summary, the CSR process of collecting information is an unobtrusive method which is essential to the Corporation's adherence to the statutory mandates that it be accountable for the funds it is appropriated. The collection of this data in no way preempts local control of the program, nor does it interfere with the attorneys professional responsibility.

CHARACTERISTICS OF CASES CLOSED
FISCAL YEARS 1980, 1981, 1982 and 1983

LEGAL PROBLEMS	1980 Number	1980 %	1981 Number	1981 %	1982 Number	1982 %	1983 Number	1983 %	1982-83 Change
Family	364,618	30.3	359,822	29.5	313,057	27.4	369,066	28.4	56,009
Housing	212,460	17.6	217,292	17.8	217,207	19.0	236,327	18.2	19,120
Income Maintenance	207,381	17.2	220,125	18.0	219,626	19.2	254,221	19.6	34,595
Consumer/Finance	164,696	13.7	167,306	13.7	160,133	14.0	171,879	13.2	11,746
Individual Rights	35,478	3.0	34,572	2.8	31,263	2.8	31,078	2.4	(185)
Employment	37,393	3.1	35,517	2.9	32,392	2.9	38,191	2.9	5,799
Health	24,003	2.0	24,860	2.0	27,119	2.3	29,755	2.3	2,636
Juvenile	11,158	0.9	13,544	1.1	13,912	1.3	15,690	1.2	1,778
Education	5,563	0.5	6,620	0.6	15,023	1.3	18,724	1.5	3,701
Other	141,103	11.7	141,936	11.6	111,749	9.8	133,397	10.3	21,648
TOTAL ALL CASES CLOSED	1,203,853	100.0	1,221,594	100.0	1,141,481	100.0	1,298,328	100.0	156,847

REASON FOR CLOSURE	1980 Number	1980 %	1981 Number	1981 %	1982 Number	1982 %	1983 Number	1983 %	1982-83 Change
Court Decision	139,523	11.6	133,045	10.9	103,999	9.1	109,013	8.4	5,014
Administrative Agency Decision	65,995	5.5	71,015	5.8	62,248	5.5	71,240	5.5	8,992
Negotiated Settlement With Litigation	43,988	3.7	49,542	4.1	37,438	3.3	39,003	3.0	1,565
Negotiated Settlement Without Litigation	81,994	6.8	81,141	6.6	55,239	4.8	57,657	4.4	2,418
Other	42,849	3.6	44,128	3.6	43,289	3.8	51,216	4.0	7,927
Brief Service	163,599	13.6	175,643	14.4	185,879	16.3	240,397	18.5	54,518
Referred After Legal Assessment	97,939	8.1	93,985	7.7	106,642	9.3	118,367	9.1	11,725
Client Withdrew or Did Not Return	132,879	11.0	139,787	11.4	100,782	8.8	116,502	9.0	15,720
Insufficient Merit to Proceed	36,310	3.0	36,954	3.0	28,919	2.5	35,338	2.7	6,419
Advice	389,218	32.3	386,925	31.7	410,471	36.0	452,861	34.9	42,390
Change In Eligibility Status	9,559	0.8	9,431	0.8	6,575	0.6	6,734	0.5	159
TOTAL ALL REASONS	1,203,853	100.0	1,221,594	100.0	1,141,481	100.0	1,298,328	100.0	156,847

15. UNDER WHAT CIRCUMSTANCES WOULD YOU NOT USE A COMPETITIVE BIDDING PROCESS?

I do not know.

16. DO YOU BELIEVE THAT AN EXISTING LEGAL SERVICES PROGRAM SHOULD BE DEFUNDED OR DENIED REFUNDING WHEN THERE IS NO ALLEGATION OF A VIOLATION OF THE ACT OR REGULATIONS WHEN THE PROGRAM HAS BEEN FOUND TO PROVIDE ECONOMICAL AND EFFECTIVE SERVICES AND WHEN THE OTHER PROGRAM BEING CONSIDERED HAS NEVER ACTUALLY DEVELOPED A TRACK RECORD ON SERVING INDIGENT CLIENTS?

It is difficult to answer such a hypothetical. I would have to examine the specific programs being reviewed.

17. DON'T YOU THINK THAT PRIOR TO DEFUNDING OR DENYING AN APPLICATION FOR REFUNDING ANY NEW POTENTIAL RECIPIENT SHOULD HAVE TO DEMONSTRATE THAT IT CAN PROVIDE MORE ECONOMIC AND EFFECTIVE SERVICES THAN AN EXISTING RECIPIENT?

Economic efficiency is only one of many factors one would look at to make any decisions.

18. IF YOU IMPLEMENT A COMPETITIVE BIDDING PROCESS, WHAT PROVISIONS WILL YOU MAKE FOR EXISTING CLIENTS WITH EXISTING CASES? HAVE YOU CONSIDERED THE ETHICAL QUESTIONS RAISED BY A DEFUNDING BASED ON COMPETITIVE BIDDING?

I would imagine that any change would take place in a similar manner that any law firm goes through when it has personnel changes. Yes, I have considered the ethical questions associated with using different lawyers.

19. HOW DOES THE OFFICE OF COMPLIANCE AND REVIEW (OCR) CONDUCT AN INVESTIGATION WHEN A COMPLAINT IS RECEIVED? DOES IT HAVE ANY PROCEDURES OR STANDARDS FOR DOING INVESTIGATIONS?

a) When a complaint is received by OCR, it is immediately reviewed by the Director of OCR. Upon the Director's determination that the complaint is one which is within OCR's jurisdiction, the matter is turned over to OCR's Administrative Assistant for her to docket it, open up a file for it, attach an Assignment Memorandum form to it and return it to the Director. The Director then assigns the case to a member of his staff and, in some but by no means all cases, includes specific instructions or general advise on how to proceed with the investigation.

The staff member to whom the case is assigned then reviews the file, along with any instructions provided by the Director, and investigates the complaint. Each permanent member of OCR's professional staff is an experienced investigator and he/she then determines what in his/her experience and professional judgment is the best manner to proceed. In making this determination, the attorney/investigator consults the Director and may seek other guidance and advice.

The investigation may be carried on exclusively by written correspondence and telephone, or it may entail one or more on-site visits, in-person interviews, review of documents, etc. (In all instances, the subject program is not only afforded an opportunity to comment on the allegations but is encouraged or specifically requested to do so.) Once the factual investigation is concluded and any necessary legal research and analysis is performed, a Closure Memorandum is drafted and submitted to the Director of OCR for his perusal. Upon his review of the Closure Memorandum, the Director may approve closure of the case or direct that additional investigation, research and/or analysis be performed.

When no violation of the LSC Act, any of the rules or regulations promulgated thereunder, or riders to LSC's annual appropriations measures are found, the matter is closed with a finding of no violation and letters to all interested parties (i.e., complainant, the subject program, and the party who referred the complaint to LSC) informing them of our findings.

When a violation of any of the aforementioned provisions is found, the Closure Memorandum (along with a transmittal memo from the Director) is forwarded to the President of the Corporation for his perusal and determination as to how to proceed.

b) Generally speaking, OCR's procedures are as outlined above. However, there are no formal, written procedures currently in effect nor have there been any at any time since OCR's inception.

20. WILL YOU CONSIDER ADOPTING PROCEDURES FOR OCR INVESTIGATION OF COMPLAINTS WHICH PROVIDE THE FOLLOWING:

a. NOTICE OF THE SPECIFIC CHARGES TO THE RECIPIENT, INCLUDING SPECIFIC REFERENCES TO LSC ACT AND REGULATIONS?

As noted above, OCR does have a well-settled procedure for its investigation of complaints. Moreover, OCR is of course open to considering the adoption of formal, written procedures for its investigation of complaints.

OCR's practice has always been (and continues to be) to inform the subject recipient of all charges being investigated. (The decision of at what specific point during the investigation such disclosure is made depends upon the nature of what is being investigated and a consideration of the possible consequences of disclosure at a given point in the investigation. In particular, consideration is given to the question of whether premature disclosure would jeopardize the investigation.)

OCR routinely provides specific references to any relevant statutory, regulatory or other (such as Grant Assurances) provisions. However, this is done with the understanding that such reference to specific provisions does not preclude expansion of the scope of the investigation based on information received or developed during the course of the investigation.

b. THE OPPORTUNITY FOR THE RECIPIENT TO RESPOND IN WRITING AND ORALLY TO THE CHARGES, PRIOR TO AN INVESTIGATION BY LSC? IF NOT, WHY NOT?

OCR invariably invites (and usually requests) the subject recipient's response (preferably in writing) to the allegations made against or questions raised about the activities of the recipient.*

(The question of whether the opportunity to respond is afforded "prior to an investigation" is really one of semantics. Once a complaint is received, reviewed by the Director, docketed and assigned to an OCR staff member, any request for comment by the subject recipient is and should be recognized as part and parcel of OCR's "investigation.")

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* In the interest of completeness, it should be noted that not all of OCR's investigations commence with or require the receipt of a formal complaint. Clearly, the vast majority of OCR's investigations arise from complaints received. However, if a routine OFS monitoring visit raises questions, or a

c. CONFIDENTIALITY OF THE INVESTIGATION AND ITS RESULTS UNTIL THE INVESTIGATION IS COMPLETED AND THE RESULTS PUBLICLY RELEASED?

As a general practice, anyone who lodges a complaint with or refers a complaint to OCR (such as a Member of Congress or a Federal agency) is apprised of the status of the investigation of their complaint upon request. However, as there are no "results" reached or "findings" made until conclusion of the investigation, none are available until such time as the Director reviews the Closure Memorandum submitted in the particular case and approves closing of the case. Even then, OCR's release of findings is only to the complainant(s) and the subject recipient. Any release to the media or other interested party is made by one or another branch (e.g., Public Information, Government Relations, etc.) of LSC's Executive Office.

OCR is open to considering a stricter standard of confidentiality, but such must of course be weighed against the public, Congress and other parties' need to know.

d. AN OPPORTUNITY FOR THE RECIPIENT TO COMMENT ON THE DRAFT FINAL REPORT BEFORE IT IS PUBLICLY RELEASED?

It is OCR's practice to afford both the subject recipient and the complainant an opportunity to fully address any question or issue raised at any point during the investigation. It has not, however, been OCR's practice to forward to each subject recipient (irrespective of whether there appears to have been a violation) a draft copy of the Closure Memorandum before reviewed and signed off on by the Director. Indeed, OCR's closure memoranda are considered internal documents and are not the means by which its findings are communicated to anyone outside of the Corporation. When OCR's findings are communicated to the public or anyone else outside of the Corporation, it is done by letter, press release or in some form of oral statement.

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*Continued

government report, newspaper or magazine article suggests the existence of improper activity, OCR not only may but should and does undertake any appropriate investigation. Indeed, the LSC Act requires LSC (and, as LSC's investigative arm, OCR) to insure compliance with a wide assortment of statutory provisions.

21. WILL YOU ASSURE THAT THE OCR PROCESS TAKE INTO ACCOUNT PROVISIONS OF THE CODE OF PROFESSIONAL RESPONSIBILITY AND STATE BAR ETHICAL RESTRICTIONS ON CLIENT CONFIDENTIALITY? WILL YOU HONOR THE INTERPRETATIONS OF THE CODE BY THE ABA COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY?

a) We will not only assure but insist that the OCR process take into account provisions of the Code of Professional Responsibility and state bar ethical restrictions on client confidentiality. However, that is not to say that a simple assertion that something falls under a privilege should necessarily be accepted as conclusive. (It may be in a given case that further inquiry need be made in order to ascertain whether there is a valid privilege, whether the party whose privilege it is is asserting it and whether the subject does in fact fall within the privilege.)

b) We will, of course, honor the ABA Committee on Ethics and Professional Responsibility interpretations of the Code of Professional Responsibility. We will, however, reserve the right to make and challenge interpretations where appropriate.

22. WILL THE CORPORATION DO A LEGAL NEEDS STUDY? IF SO, WHAT IS THE CURRENT STATUS OF THE STUDY?

Yes.

23. WHO WILL CONDUCT THE STUDY?

It has not yet been determined.

24. WHEN WILL THE STUDY BEGIN?

It has not yet been determined.

25. WHAT IS THE PURPOSE OF THE STUDY?

To determine the legal needs of the poor in an accountable fashion.

26. INTO WHAT SUBSTANTIVE AREAS WILL THE STUDY PROBE?

It has not yet been determined.

27. HOW WERE THOSE AREAS CHOSEN?

Not applicable.

28. WHAT DO YOU ESTIMATE TO BE THE COST OF THE STUDY?

Until the scope of the study is determined, no accurate estimate of costs can be made.

29. WHAT ALTERNATIVE APPROACHES HAVE YOU CONSIDERED:

a. USING A SERIES OF LOCAL OR STATEWIDE STUDIES?

b. EXPANDING EXISTING LOCAL OR STATEWIDE STUDIES?

Suggestions to alternative approaches will be considered prior to any final determination of how the study will be conducted.

30. HOW WILL THE CORPORATION INVOLVE REPRESENTATIVES FROM RECIPIENTS IN PLANNING AND DESIGNING THE STUDY?

It has not yet been determined.

31. PREVIOUSLY, AN ADVISORY COUNCIL WAS TO BE SET UP. IS SUCH AN ADVISORY BODY NOW CONTEMPLATED? WHO WILL BE ON IT? WILL PROGRAM REPRESENTATIVES WITH KNOWLEDGE OF LEGAL NEEDS STUDIES BE INCLUDED?

Yes. Its composition has not yet been determined. Those with knowledge of the relevant subject matter will be included.

32. LSC HIRED A CONSULTANT TO ASSIST IN DEVELOPMENT OF THE STUDY IN 1984. COULD YOU TELL US WHAT THE CONSULTANT RECOMMENDED? PLEASE PROVIDE US WITH COPIES OF ALL RELEVANT COMMUNICATIONS, REPORTS, MEMORANDA OR OTHER WRITTEN MATERIALS PREPARED BY THE CONSULTANT AND COPIES OF THE COMMUNICATIONS SENT TO THE CONSULTANT.

See attachments.* LSC has not taken any position on this study: its methodologies, assumptions, or conclusions.

33. LSC FUNDS A SUPPORT CENTER, NATIONAL SOCIAL SCIENCE AND LAW CENTER, WITH SUBSTANTIAL EXPERTISE ON LEGAL NEEDS STUDIES. HOW DO YOU CONTEMPLATE TAKING ADVANTAGE OF THAT EXPERTISE?

I have not yet made that determination.

34. MR. DURANT, THE COMMITTEE UNDERSTANDS THAT CHARLES JARVIS HAS ANNOUNCED THAT HE IS NOW THE VICE PRESIDENT OF LSC. IS THAT SO? WHO HIRED MR. JARVIS?

Yes, as provided in the statute and by-laws, Mr. Jarvis was hired by Mr. Opsut, Interim President.

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*In the interest of economy, this attachment was retained in the files of the Committee due to its voluminous content.

35. PLEASE TELL US THE PROCESS YOU UTILIZED TO RECRUIT AND SELECT MR. JARVIS (i.e., POSTING, ADVERTISING, INTERVIEWING, etc.). WERE THRE OTHER CANDIDATES FOR THE POSITION? DID YOU FOLLOW THE LSC PERSONNEL MANUAL IN MAKING YOUR SELECTION?

Mr. Jarvis was recommended to Mr. Opsut as a possible candidate by me.

Mr. Jarvis was interviewed by Mr. Opsut. The LSC personnel manual does not apply to hiring officers of the Corporation.

36. IS IT USUAL, OR INDEED APPROPRIATE, UNDER THE LSC BY-LAWS, FOR THE BOARD CHAIRMAN TO HIRE STAFF AT LSC? HAS THE BOARD APPROVED YOUR HIRING DECISION?

I did not hire Mr. Jarvis. Mr. Opsut hired Mr. Jarvis as Vice President after consultation with and approval by the full Board of Directors.

37. I UNDERSTAND THAT THE CURRENT LSC PRESIDENT HAS NOT APPLIED FOR THE POSITION. IS HE NEVERTHELESS UNDER CONSIDERATION FOR THE JOB AS PERMANENT PRESIDENT OF THE LEGAL SERVICES CORPORATION?

He has removed himself from consideration.

38. HAVE YOU PERSONALLY, OR THROUGH OTHERS, RECRUITED PEOPLE TO APPLY FOR THE JOB?

Yes.

a. WHAT ARE THE NAMES OF THOSE PEOPLE?

I do not know the names of all those people as I asked, as well as the full Board, for a wide call to go out to people to apply. Letters were sent to every program, every governor and a broad spectrum of other people. In addition, advertisements were placed to recruit applicants in such publications as the Wall Street Journal, ABA Journal, National Law Journal, and the American Spectator.

Many people were requested to suggest or recruit candidates. The Names of applicants are in excess of 200 and are confidential at this time.

39. DO YOU KNOW ANY OF THE APPLICANTS PERSONALLY?

None of the applicants is a personal friend or associate of mine.

a. IF SO, WHO DO YOU KNOW AND IN WHAT CONTEXT DO YOU KNOW THEM?

Not applicable.

Mr. Durant, you have talked about the need for the Legal Services Corporation and its grantees to experiment with new alternative dispute resolution techniques, perhaps involving nonprofessionals in such areas as landlord/tenant disputes. I'd like to ask you a few questions about this:

40. DO YOU FORSEE USING WHATEVER NEW MONEY MAY BE AVAILABLE TO THE CORPORATION TO CONDUCT THESE EXPERIMENTS, OR WOULD YOU DIVERT MONEY FROM EXISTING PROGRAMS?

I would use whatever money the Board would deem appropriate.

41. GIVEN LAWS IN ALMOST EVERY STATE AGAINST THE UNAUTHORIZED PRACTICE OF LAW, HOW WOULD YOU IMPLEMENT YOUR NOTION OF INVOLVING NON-PROFESSIONALS IN DISPUTE RESOLUTION?

To my recollection I have never recommended non-professionals for dispute resolution rather non-lawyers.

This is a good question and I don't yet have an answer for it, but I certainly will discuss it.

42. HOW MUCH DO YOU KNOW ABOUT WHAT LEGAL SERVICES PROGRAMS HAVE ALREADY DONE IN THIS AREA?

I have not yet reviewed what legal services programs have already done in this area.

43. THE SUCCESS THAT HAS ALREADY BEEN ACHIEVED IN THE DEVELOPMENT OF NEW COST EFFECTIVE METHODS OF DISPUTE RESOLUTION HAS COME ABOUT THROUGH ACTIVE POLICY ADVOCACY BY LEGAL SERVICES LAWYERS. SINCE YOU WOULD LIKE TO SEE LESS POLICY ADVOCACY BY LEGAL SERVICES PROGRAMS, HOW THEN, WOULD YOU SUGGEST THAT YOUR GOAL OF LESS EXPENSIVE DISPUTES RESOLUTION BE ACHIEVED?

Like all goals, one must approach them with an openness and a willingness to experiment.

Questions from Senator Dodd to William Clark Durant

44. YOU HAVE SAID YOU BELIEVE THERE ARE POTENTIAL PRIVATE SOURCES OF LARGE DONATIONS TO FINANCE THE PROVISION OF LEGAL SERVICES TO POOR PEOPLE.

a. WHAT STEPS HAVE YOU TAKEN SINCE DECEMBER 1984 TO OBTAIN PRIVATE DONATIONS FOR THE SUPPORT OF LEGAL SERVICES? (FOR THE RECORD, PLEASE DESCRIBE YOUR EFFORTS AS SPECIFICALLY AS POSSIBLE WITHOUT NAMING POTENTIAL DONORS.)

I have met with officials of several corporations and bar leaders.

b. WHAT LEVEL OF PRIVATE SUPPORT FOR LEGAL SERVICES NATIONWIDE DO YOU EXPECT TO ATTRACT IN 1985 AND 1986?

Such a determination has not been made.

45. IN YOUR PRIVATE ATTORNEY INVOLVEMENT INITIATIVE, I UNDERSTAND THAT MANY OF THE CASES ARE OF THE TYPE WHICH CAN BE EASILY HANDLED BY PRIVATE COUNSEL WITH LITTLE EXPERIENCE IN REPRESENTING LOW-INCOME CLIENTS, e.g., BANKRUPTCY, WILLS, DIVORCES, etc.

a. DO SUCH CASES REPRESENT THE PRIORITY NEEDS THAT LOW-INCOME AMERICANS HAVE FOR LEGAL REPRESENTATION? (WHAT EVIDENCE DO YOU HAVE FOR SUCH A BELIEF?)

All case types selected were in consultations with local staff attorney programs and therefore that would reflect local priorities. As an extra resource, LSC met case needs not previously met. Sensitivity to local needs has led to expanded numbers of case types being tested.

b. A COMMONLY QUOTED STATISTIC IS THAT LEGAL SERVICES PROGRAMS ONLY SERVE 10 PERCENT OF THE NEED THAT VULNERABLE AMERICANS HAVE FOR LEGAL REPRESENTATION. FOR THE RECORD, OUTLINE ALL SUCH NEEDS IN DETAIL.

46. WHY ARE YOU INCREASING COMPENSATED PRIVATE ATTORNEY SERVICES? (I UNDERSTAND YOU ARE INCREASING THE 10% GUIDELINE TO 12.5%).

The required PAI regulation is 12.5%. This Board is reviewing such and has not made a final determination.

a. WHY NOT INCREASE PRO BONO PRIVATE LEGAL SERVICES, GIVEN YOUR DESIRE TO ATTRACT ADDITIONAL PRIVATE SUPPORT FOR LEGAL SERVICES PROGRAMS?

I have been encouraging efforts to increase pro bono.

47. I UNDERSTAND THAT YOU HAVE SUGGESTED IN SPEECHES THAT LAY ENTREPRENEURS COULD EASILY LEAP IN TO MEET THE NEED OF VULNERABLE AMERICANS FOR LEGAL SERVICES IF THERE WERE NO "REGULATORY" REQUIREMENTS FOR THE LICENSING OF ATTORNEYS.

a. HOW DO YOU ENVISION LAY ENTREPRENEURS MEETING THE NEEDS OF LOW-INCOME AMERICANS FOR LEGAL REPRESENTATION.

In the same way that entrepreneurs meet the needs of low-income Americans in providing other necessities of life.

William Clark Durant

Response to Questions of Sen. Dodd

1. In your response to my prior question regarding competitive bidding for grants, you said that there are circumstances where competitive bidding may produce the best product and the maximum resources.

--Please expand upon that answer, specifically with respect to the annual refunding of basic field grants and explain to the Committee how competitive bidding will provide higher quality services to clients and strengthen the delivery of legal services in general.

The principal way in which competitive bidding will improve legal services is through the incentive it will give current providers to improve existing programs. Our current programs are of uneven quality. The 1984 LSC Fact Book reported that there were 21 programs that closed less than 25 cases per $10,000 of LSC funding in 1983, while the vast majority of programs closed more than 50 for that sum. Without examining them one by one I am not prepared to say that those programs are not wellrun, but I believe that statistic does indicate that there is room for improvement in the efficiency of some grantees. I can think of nothing that would give the Board of Directors and staffs of those programs the incentive to improve their efficiency, their responsiveness to clients, and their recruitment of volunteers from the private bar, than the prospect that another organization may be able to successfully compete for the right to serve that community.

Competition could also strengthen legal services delivery by allowing the LSC to choose new, more efficient providers in some communities. In some cases, the configuration of current programs may not be efficient. Congressman George O'Brien has said that the Will County Legal Aid Society would, in his opinion, be able to offer better service if LSC were to fund it directly rather than through Prairie States Legal Services, Inc. The late Congressman Gillis Long asked LSC to consider direct funding of Allen Legal Services in Allen Parish, where local people had offered to match LSC funds to keep an office open in their community that the current LSC grantee had closed. That was in a community with 24% unemployment that is now 60 miles from the nearest LSC funded office. I don't know whether we should fund these groups separately, but I firmly believe it is wrong for the law to make it virtually impossible for us to do so. I really do not believe that is Congress' intent and I trust that the authorization and appropriations bills adopted this year will enhance our flexibility to respond to such proposals.

Finally, I believe that a more competitive refunding process would make our current grantees more careful to observe the letter and spirit of the law. I don't believe the National Client's Council would have let their director use LSC funds to make himself an interest free loan if they thought the LSC had a practical mechanism for not renewing their grant--as it is, the NCC has held on to its grant for 1 1/2 years now since this abuse was discovered and the administrative process continues.

Competition works throughout our economy. Legal services for middle class people are now available more widely and inexpensively because the courts have stricken down the barriers to adverstising to permit lawyers to compete for client business. I don't know of any other federal program in which a recipient of a grant has a perpetual right to renewal of that grant, without competition from others, unless he's caught twice in violation of law. I have no reason to believe that competition for LSC basic field grants will do anything except result in providers of service who make a better effort to satisfy their clients.

In closing, Senator, let me assure you that improving service to clients would be the objective of any change in the grant-making process that would have my support. I would also be most insistent that adequate measures would be required to insure the orderly completion of cases already undertaken by any current LSC grantee whose funding was not continued.

2. **IN YOUR RESPONSE TO MY PRIOR QUESTIONS REGARDING THE CASE SERVICE REPORTS, YOU STATED THAT THE CORPORATION HAS NOT DECIDED TO MOVE FROM QUARTERLY REPORTS FROM EACH PROGRAM TO MONTHLY REPORTS FROM EACH ATTORNEY AND PARALEGAL.**

--HAS THE CORPORATION INDICATED OTHERWISE TO THE FIELD PROGRAMS? IF SO, WHY? WHEN WILL THE CURRENT STATUS OF CASE SERVICE REPORTS BE CLARIFIED WITH FIELD PROGRAMS?

No announcement has been made to the field programs effecting a change in Case Service Reporting (CSR) from quarterly to monthly. LSC has also taken steps to review improved CSR systems, soliciting input from regional and field offices. The following excerpt from the LSC Program Notes of May 7, 1985, states:

> Acting Director of the Office of Field Services, Peter Broccoletti, appointed a Case Service Reporting (CSR) Advisory Panel to evaluate the effectiveness of the CSR System and proposed changes under consideration. The Panel will hold meetings during the next months at LSC Headquarters. Acting as coordinator for the Panel is Keith Osterhage, Acting Manager of the Program Development and Substantive Support Unit. Members of the CSR Advisory Panel are:
>
> Bob Cohen, Program Director, Legal Aid Society of Orange County, Inc., Santa Ana, California; Kent Spuhler, Program Director, Jacksonville Area Legal Aid, Inc., Jacksonville, Florida; Stan Foster, Program Director, Legal Aid of Western Oklahoma, Inc., Oklahoma City, Oklahoma; LeAnna Hart Gibson, Executive Director, Monroe County Legal Assistance Corporation, Rochester, New York; Neil Haight, Program Director, Montana Legal Services Association, Helena, Montana; Victor Geminiani, Program Director, Legal Services of Northern California, Sacramento, California; Jacquelyn Mitchell, Regional Director, Atlanta Regional Office, Atlanta, Georgia; John Fitzgerald, Regional Director, Chicago Regional Office, Chicago, Illinois; Marjorie McDiarmid, Regional Director, Northern Virginia Regional Office, Washington, D.C.; Bernard Frey, Director, Office of Information Management, LSC; Malcolm Slovin, Deputy Director, Office of Information Management, LSC; Tony Gomes, Acting Director, Monitoring and Evaluation, Monitoring and Evaluation Unit, LSC.

3. PLEASE GIVE ME EXAMPLES OF HOW SUBMITTING DISAGGREGATED DATA TO THE CORPORATION WILL ASSIST A LEGAL SERVICES PROGRAM IN ITS LOCAL MANAGEMENT RESPONSIBILITIES AS YOU CLAIMED IN RESPONSE TO MY PRIOR QUESTIONS.

First of all, many local program directors already collect such information (although such information is not forwarded to LSC since it is not required by the current CSR system). A disaggregate data system allows comparison of attorney performance, comparison within categories of case type and reason for case closure. Aggregate data does not permit such meaningful comparisons for LSC evaluation of program output and productivity. Local managers likewise gain a potential management tool for evaluating staff performance relative to the statistical average. Finally, there is less time and cost involved for local managers since aggregate data, by logic, comes from disaggregate data. This disaggregate approach does not require them to aggregate their information for LSC.

QUESTION

IN RESPONSE TO MY PRIOR QUESTIONS, YOU DESCRIBED AN INTERNAL PAPER FLOW PROCESS FOR THE HANDLING OF COMPLAINTS BY THE OFFICE OF COMPLIANCE REVIEW.

--ARE YOU AWARE OF INSTANCES WHERE THAT PROCESS HAS NOT BEEN FOLLOWED? IF SO, WHAT WILL YOU DO TO ASSURE THE COMMITTEE THAT A FAIR, THOROUGH AND PROFESSIONAL PROCESS WILL BE FOLLOWED IN INVESTIGATING COMPLAINTS.

ANSWER

a) I can think of only one instance which even arguably falls within the category of "[cases] where [the] process [was] not... followed," and that is the case of the Reggie Program.[1] OCR's involvement with the Reggie Program did not commence with a complaint filed with OCR and, in fact, never amounted to formal OCR involvement. Instead, Victor Fortuno (then an OCR staff attorney and currently Acting Director of OCR) was asked to assist the Office of Field Services with its routine monitoring and evaluation of the Reggie Program. He served as Captain of the monitoring team and, as irregularities were uncovered, conducted/coordinated their investigation. The case was not received as a complaint or docketed as an OCR investigation, and an OCR Closure Memorandum was not prepared. Instead, it was handled as monitoring and evaluation of the program, with particular attention paid to compliance issues.

b) I have no reason to believe that any of OCR's cases were handled in a manner short of fair, thorough and professional.[2] The Corporation will ensure that OCR is continued to be staffed by highly qualified, professional, experienced personnel of sound judgement. Moreover, we will see to it that OCR continues to adhere to the well-settled practices that I previously outlined for the Committee. Great care will, of course, continue to be paid to the concerns of both the programs and the complainants.

If there are any other questions on this matter, or if you wish further elaboration on any particular points, I would be more than happy to respond further.

---

[1] The Reginald Heber Smith Community Lawyer Fellowship Program is more commonly known as the "Reggie Program."

[2] In only one instance, that of the investigation of numerous complaints lodged against Texas Rural Legal Aid, Inc., did anyone in OCR respond to media requests for a written statement of allegations. This occurred in early January of this year and was done only because the local community itself had expressed a strong interest in being apprised of the allegations being investigated.

This is by no means OCR's practice but, instead, was an isolated instance and is something which OCR does not contemplate doing again.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Valois (LAST) Robert (FIRST) Arthur (OTHER) Middle

Position to which nominated: Director, Legal Services Corp.

Date of nomination: January, 1985 October, 1983

Date of birth: 13 (DAY) May (MONTH) 1938 (YEAR) Place of birth: New York City, New York

Marital status: Married Full name of spouse: Ruth Emilie Skacil Valois

Name and ages of children: Marguerite Jeannette ~~20~~ 21

Robert Arthur, Jr. ~~18~~ ~~19~~ 20

Education:

Institution	Dates attended	Degrees received	Dates of degrees
P.S. 108 (NYC)	1945-1947		
S. Miami Elementary	1947-1950		
Ponce de Leon Jr. High	1950-1952		
Coral Gables High Sch.	1952-1956		
ET "A" School (USN)	1956		
IC "A" School (USN)	1957		
MPO "C" School (USN)	1957		
University of Miami	1959-1962	BBA	1962
Wake Forest University	1970-1972	JD	1972

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Associate Editor - Wake Forest Law Review

North Carolina Bar Association Foundation for service as a CLE lecturer

Honorable Discharge, United States Navy

Certificate of Service - NLRB - 10 years to ~~U.S. Government~~

Appointed Director - Legal Services Corporation

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

It is my understanding that this question does not apply to the position for which I have been nominated.

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Not applicable

3. Has a commitment been made to you for employment after you leave Federal service?

Not applicable

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

An inquiry, on behalf a client, about the conduct of an employee of a field program.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

I have written letters to Senators Robert Morgan and Jesse Helms with reference to the Labor Reform Act. I also spoke to groups of persons concerning the Labor Reform Act and urged them to write to their Senators.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I will not participate in any resolution of this matter should it come before the Board, which is unlikely.

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005
[illegible]

April 26, 1985

The Honorable Orrin G. Hatch
Chairman
Senate Committee on Labor and
   Human Resources
SD 428, United States Senate
Washington, D.C.   20510

Dear Senator Hatch

Enclosed are my responses to the questions submitted by Committee Members as a follow-up to the Committee's Confirmation Hearing on April 24, 1985.

Sincerely,

Robert A. Valois ss

Robert A. Valois
Member, Board of Directors

Enclosure

Questions from Senators Kennedy, Dodd, and Kerry for Robert A. Valois

1. DO YOU THINK THE NEW LSC PRESIDENT MUST HAVE A COMMITMENT TO THE POOR AND TO LEGAL SERVICES FOR THE POOR WHICH HAS BEEN DEMONSTRATED BY PREVIOUS INVOLVEMENT IN POVERTY PROGRAMS OR LEGAL SERVICES?

   The new LSC president must have a commitment to the poor. It is not essential that the new president actually have had previous involvement in poverty programs or legal services, but it might help.

2. DO YOU THINK THE LSC PRESIDENT SHOULD HAVE EXPERIENCE IN AND KNOWLEDGE OF LEGAL SERVICES PROGRAMS FOR THE POOR?

   Experience in and knowledge of legal services programs for the poor would be helpful but is not a requirement.

3. HOW IMPORTANT TO YOU IS IT THAT THE NEW PRESIDENT BE CAPABLE OF GAINING THE CONFIDENCE OF THOSE WHO WORK IN THE FIELD OFFICES OF LSC PROGRAMS?

   Very important.

   a. WHAT TRAITS DO YOU THINK AN APPLICANT MUST HAVE IN ORDER TO WIN THAT CONFIDENCE?

      Integrity, openness, honesty, patience, and be a good lawyer.

4. DO YOU SUPPORT CONTINUED FEDERAL FUNDING OF LEGAL SERVICES?

   Yes.

5. WHAT LEVEL OF FEDERAL FUNDING DO YOU THINK IS NECESSARY TO MAINTAIN CURRENT SERVICE LEVEL IN FY 1986? FY 1987? AND FY 1988?

   I voted for a $305 million budget submission for FY 1986. I do not yet have figures for FY 1987 and FY 1988.

6. NOT WITHSTANDING ANY RESTRICTIONS CURRENTLY PLACED ON LEGAL SERVICES PROGRAMS, WHAT DO YOU PERSONALLY BELIEVE IS THE APPROPRIATE ROLE OF LEGAL SERVICES LAWYERS IN SERVING THEIR CLIENTS? IF YOU COULD START FROM THE BEGINNING AND FORM A NEW LEGAL SERVICES PROGRAM, WHAT WOULD YOU DO?

   Legal services attorneys role in serving their clients is no different than the role and responsibility any lawyer has to his client except that he must also comply with the LSC Act as well.

   I would seek input and guidance from eligible clients, the bars, Congress, and all interested parties.

Questions from Senator Simon for Robert A. Valois

7. ADEQUATE FUNDING -- WILL YOU SUPPORT ADEQUATE APPROPRIATIONS FOR THE CORPORATION, IN AN AMOUNT SUFFICIENT TO PROVIDE THE SAME LEVEL OF SERVICE TO ALL ELIGIBLE PERSONS, ACCORDING TO THE 1980 CENSUS?

   Yes.

8. ROLE OF THE PRIVATE BAR -- WILL YOU RESIST EFFORTS TO SUPPLANT LEGAL SERVICES ATTORNEYS WITH REPRESENTATION FROM THE PRIVATE BAR, UNLESS YOU ARE ABSOLUTELY ASSURED THAT THE QUALITY OF LEGAL SERVICES AND THE COMMITMENT TO LEGAL AID FOR THE POOR WILL NOT BE DIMINISHED?

   Yes.

9. AREAS OF LEGAL SERVICES ATTORNEYS PRACTICE -- WILL YOU WORK TO ASSURE THE CONTINUED EMPHASIS OF LEGAL SERVICES ATTORNEYS IN THE FOLLOWING PRINCIPAL AREAS OF PRACTICE: FAMILY LAW, HOUSING, INCOME MAINTENANCE AND CONSUMER CREDIT?

   Yes.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: SWAFFORD (LAST) CLAUDE (FIRST) GILBREATH (OTHER)

Position to which nominated: Board of Directors of Legal Services Corporation

Date of nomination: October 11, 1983

Date of birth: 7 (DAY) 12 (MONTH) 25 (YEAR)

Place of birth: Greenville, Tennessee

Marital status: Married

Full name of spouse: Howard Graham Swafford, Sr.

Name and ages of children:
Howard Graham Swafford, Jr. Age 33
Claudia Swafford Haltom Age 30

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Tusculum College	1944-46		
University of TN - College of Law	1946-48	Law Licenses	3-16-49
University of TN	1973-75	B. S.	5-[illegible]2-76
TN Technological University	1975-77	M. A.	8-13-77

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

1. Ford Foundation - Fellowship Leadership Development Program - 1974-75
2. Life Membership: Parent Teacher Association - 1964
   Women of the Church 1962
3. Personalities of the South - 1976-77
4. Recipient of Boardsmanship Award (Tennessee School Board Association) - 1978

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
TN Bar Association		
Marion County Bar Association		
TN School Boards Attorneys		
University of TN Alumni		
Methodist Church	Many Offices	1937-85
Marion Co. Republican Women	Vice-President & President	1952-83
TN School Boards Assoc.	Vice-President & President	1977-78

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

12-76-to 4-85	Self employed	So. Pittsburg, TN	Atty.
9-66 to 9-78	Elected member of Marion County School Board	Jasper, TN	Education
1951 to 12-76	Housewife, reared family, participated in many civil, political, religious & social activities	So. Pittsburg, TN	
8-48 to 2-51	Raulston & Swafford Attorneys	So. Pittsburg, TN	Legal Secretary Attorney
6-44 to 4-48	Gilbreath Ice & Coal Company	Greenville, TN	Supervise family business

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

1. Member of Board of Directors of Team Evaluation and Diagnostic Center - Chattanooga, Tennesse
2. Member of Vocational Advisory Committee - State (Tennessee)
3. Chairman and member of Community Education Advisory Committee - State (Tennessee)
4. Member of State Textbook Commission - State (Tennessee) 1980-83
5. Marion County Board of Education 1966-1978
6. Member Executive Council - Tennessee - 1972-76
7. School Boards Association
Tennessee School Boards Association - Vice-President 1977; President 1978(* see 8 below)

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

1. Should School Board Members Be Evaluated - 1978
2. In Good Faith - an article on professional negotiat 1978.

(These articles written for Bulletin - Tennessee School Boards Association publication during tenure as Presiden for that organization.)

* (from Government Experience) above
8. Chairman of Tennessee School Boards Association Headquarters Facility - 1982 to 1984.

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Political Affiliation - Marion County Republican Party Marion County Republican Woman's Club (President, Vice-President) Pachydrem Club.

Contributions - Marion County Republican Party -TN

Republican Party - Better Schools Program (Tennessee)

Alexander (Tennessee) for Governor - Shirley Duer (State of Tennessee) Representative - Reagan for President - Howard Baker (Senator).

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes, if such is needful

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Yes, return to private practice of law.

3. Has a commitment been made to you for employment after you leave Federal service?

No

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

I have represented indigents in Social Security Disability Hearings but can see no potential conflict.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

When I was President of the Tennessee State School-board Association in 1978 I went to Washington to talk with the Tennessee Delegation on legislation pertaining to tuition tax credits and the Department of Education.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

If a potential conflict should arise, I would reveal such and decline to act on the issue.

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202)

April 26, 1985

The Honorable Orrin G. Hatch
Chairman
Senate Committee on Labor and
Human Resources
SD 428, United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Enclosed are my responses to the questions submitted by Committee Members as a follow-up to the Committee's Confirmation Hearing on April 24, 1985.

Sincerely,

Claude Swafford

Claude Galbreath Swafford
Member, Board of Directors

Enclosure

Questions from Senators Kennedy, Dodd, and Kerry for Claude G. Swafford

1. DO YOU THINK THE NEW LSC PRESIDENT MUST HAVE A COMMITMENT TO THE POOR AND TO LEGAL SERVICES FOR THE POOR WHICH HAS BEEN DEMONSTRATED BY PREVIOUS INVOLVEMENT IN POVERTY PROGRAMS OR LEGAL SERVICES?

   Yes. The new president must have a commitment to the poor and to legal services for the poor. Previous involvement in a poverty program is certainly one way to demonstrate a commitment to the poor.

2. DO YOU THINK THE LSC PRESIDENT SHOULD HAVE EXPERIENCE IN AND KNOWLEDGE OF LEGAL SERVICES PROGRAMS FOR THE POOR?

   Experience in and knowledge of legal services programs for the poor would be a significant factor, from my point of view.

3. HOW IMPORTANT TO YOU IS IT THAT THE NEW PRESIDENT BE CAPABLE OF GAINING THE CONFIDENCE OF THOSE WHO WORK IN THE FIELD OFFICES OF LSC PROGRAMS?

   It is important for the president to be capable of gaining the confidence of those who work in field offices. It is equally important that the new president work with and gain the confidence of any number of persons and groups; namely, the client segment, Congress, Board members. Without the confidence of any of these groups, a president would be severely handicapped.

   a. WHAT TRAITS DO YOU THINK AN APPLICANT MUST HAVE IN ORDER TO WIN THAT CONFIDENCE?

      I intend to introduce the attached resolution at the next meeting of the committee. It outlines the traits an applicant must have. (Exhibit A)

4. DO YOU SUPPORT CONTINUED FEDERAL FUNDING OF LEGAL SERVICES?

   Yes.

5. WHAT LEVEL OF FEDERAL FUNDING DO YOU THINK IS NECESSARY TO MAINTAIN CURRENT SERVICE LEVEL IN FY 1986? FY 1987? AND FY 1988?

   Funding for 1986 should be $305 million. As a recess appointee Board member whose present term does not reach beyond 1986, I have not drawn conclusions on the needs in these years.

6. NOT WITHSTANDING ANY RESTRICTIONS CURRENTLY PLACED ON LEGAL SERVICES PROGRAMS, WHAT DO YOU PERSONALLY BELIEVE IS THE APPROPRIATE ROLE OF LEGAL SERVICES LAWYERS IN SERVING THEIR CLIENTS? IF YOU COULD START FROM THE BEGINNING AND FORM A NEW LEGAL SERVICES PROGRAM, WHAT WOULD YOU DO?

I share the view of Congress when it established the Legal Services Corporation that there is a need for equal access to the system of justice for low-income persons. At the forefront of this belief is that there will be a high quality of equal service to those seeking and receiving legal services through the Corporation. Whatever action one needed to provide quality legal service to the poor should be done so within the context of the statute.

I would not form a new legal services program, but seek to build on the present program.

Questions from Senator Simon for Claude G. Swafford

7. ADEQUATE FUNDING -- WILL YOU SUPPORT ADEQUATE APPROPRIATIONS FOR THE CORPORATION, IN AN AMOUNT SUFFICIENT TO PROVIDE THE SAME LEVEL OF SERVICE TO ALL ELIGIBLE PERSONS, ACCORDING TO THE 1980 CENSUS?

Yes. I voted to continue full funding for legal services and will work on the Board to achieve an equitable distribution of funds based on current census data.

8. ROLE OF THE PRIVATE BAR -- WILL YOU RESIST EFFORTS TO SUPPLANT LEGAL SERVICES ATTORNEYS WITH REPRESENTATION FROM THE PRIVATE BAR, UNLESS YOU ARE ABSOLUTELY ASSURED THAT THE QUALITY OF LEGAL SERVICES AND THE COMMITMENT TO LEGAL AID FOR THE POOR WILL NOT BE DIMINISHED?

I do not favor exclusively a private bar system or a staff system. There are advantages to both and a mixed delivery system makes the benefits of each available to the clients. The ABA has called for substantial private attorney involvement in the delivery of legal assistance. I welcome their interest and in implementing any expansion of private bar involvement will use exactly the standard you suggest -- continued, undiminished, high quality legal assistance.

9. AREAS OF LEGAL SERVICES ATTORNEYS PRACTICE -- WILL YOU WORK TO ASSURE THE CONTINUED EMPHASIS OF LEGAL SERVICES ATTORNEYS IN THE FOLLOWING PRINCIPAL AREAS OF PRACTICE: FAMILY LAW, HOUSING, INCOME MAINTENANCE AND CONSUMER CREDIT?

   Yes. The areas of laws you mention correspond closely with types of cases most frequently requested by clients. As a service organization, we must ensure that the client's legal needs and priorities set the agenda.

Questions from Senators Kennedy, Dodd, and Kerry for Claude G. Swafford

10. WHAT DID YOU DO UPON BEING NAMED CHAIRPERSON OF THE PRESIDENTIAL SEARCH COMMITTEE TO FAMILIARIZE YOURSELF WITH THE EXPERIENCE OF PREVIOUS LSC SEARCH COMMITTEES?

    The Presidential Search Committee has held discussions with participants in previous presidential searches and received valuable guidance on things to do and on how to avoid past mistakes.

11. DID YOU OBTAIN ALL THE MINUTES OF THE ORGANIZATIONAL MEETINGS OF THE COMMITTEES?

    I have read many of the Minutes and memoranda of previous committees.

12. DID YOU TALK WITH THE CHAIRPERSONS OF THE VARIOUS COMMITTEES TO FIND OUT WHAT THEY DID AND WHAT DIFFERENT APPROACHES THEY MIGHT SUGGEST BASED UPON THEIR EXPERIENCE?

    I have reviewed the work of the other committees and sought and received suggestions from participants in past committees.

13. DID YOU SEEK OUT ANY EXPERIENCED REPRESENTATIVES OF FIELD PROGRAMS TO GET THEIR SUGGESTIONS ON HOW TO PROCEED WITH THE SEARCH?

    Yes. Enclosed are copies of letters which were sent to every field program.

14. HAS YOUR COMMITTEE BEEN ASKED BY REPRESENTATIVES OF LSC GRANTEES TO INCLUDE NON-MEMBERS OF THE BOARD IN YOUR DELIBERATIONS?

    Yes, and that is an important consideration.

15. DIDN'T THAT REQUEST INCLUDE A PLEDGE OF CONFIDENTIALITY?

In some cases, yes.

16. DIDN'T THAT REQUEST SPECIFICALLY EXCLUDE ANY REQUEST THAT NON-MEMBERS BE GIVEN A VOTE?

In some cases, yes.

17. IF KNOWLEDGEABLE AND EXPERIENCED REPRESENTATIVES OF LSC GRANTEES HAVE SERVED ON PREVIOUS SEARCH COMMITTEES, PROVIDING THOSE COMMITTEES WITH THE INSIGHTS AND REACTIONS OF A PARTICULAR PERSPECTIVE WHICH HAS PROVED INDISPENSABLE IN THE PAST, WHY DID YOU AND YOUR COMMITTEE DETERMINE THAT SUCH PARTICIPATION IS NOT DESIRABLE IN 1985?

The committee has sought and received advice from LSC grantees and others interested in legal services. Constructive suggestions are valued by the committee. We have asked each program to suggest questions that we should ask candidates, and to submit resumes of those they would recommend. I should mention that the Presidential Search Committee is composed of a diverse and talented group of individuals who bring the committee broad and relevant experience. The committee contains a former staff attorney from an LSC field program, a former board member of a national support center and president of a major bar association, a law professor who ran a legal clinic, a former staff member of the corporation, a former congressional staff member and clerk to a Supreme Court Justice, and two clients who are civic leaders in their community. Black, White, and Hispanic; urban and rural; Republican and Democrat, all are represented on the Presidential Search Committee.

18. MRS. SWAFFORD, A GREAT DEAL HAS BEEN SAID ABOUT THE DETERIORATION OF RELATIONS BETWEEN THE CORPORATION AND ITS GRANTEES IN RECENT YEARS. ONE OF THE HALLMARKS OF THE COMMENTS BEING MADE BY ALL THE NEW NOMINEES HAS BEEN THE NEED TO RESTORE A MUTUALLY RESPECTFUL RELATIONSHIP BETWEEN THE CORPORATION AND ITS GRANTEES. CONSULTATION WITH FIELD PROGRAM REPRESENTATIVES ABOUT THE APPLICANTS FOR THE POSITION OF PRESIDENT OF THE CORPORATION SEEMS TO BE A

VERY SIGNIFICANT WAY TO GO ABOUT RESTORATION OF THIS RELATIONSHIP, AND YET YOUR COMMITTEE APPEARS TO HAVE REJECTED IT WITHOUT A GREAT DEAL OF THOUGHT. WOULD YOU LIKE TO EXPLAIN THIS APPARENT INCONSISTENCY?

The Board has gone to great lengths to demonstrate its eagerness to hear all points of view from all interested parties. I am personally interested in ensuring that everyone who has something to contribute is given a chance to present his case before I reach a decision on important policy issues before the Board. I very much want a constructive, respectful relationship with all those interested in the delivery of legal services.

LEGAL SERVICES CORPORATION

February 1, 1985

Dear Project Director:

As you may be aware, the Legal Services Corporation (LSC) Board of Directors has formed a Presidential Search Committee for the purpose of finding the most qualified candidates for the position of President of LSC.

I have been directed by the Chairman of the Board, W. Clark Durant, III, and the Chairman of the Presidential Search Committee, Claude Swafford, to distribute copies of the posting of the position of President and to solicit your suggestions for the Committee as to those qualifications the Board should consider in selecting the next LSC President. In addition, you are encouraged to submit the resumes of those individuals whom you would recommend for the position. Complete resumes are due on April 1, 1985.

If you would like an opportunity personally to address the Committee at its February 22, 1985, meeting in Washington on a particular candidate or general qualifications, please submit your comments to me, in writing, by February 12, 1985. The Search Committee will try to allow as much oral comment as time and other matters permit.

Sincerely,

Timothy H. Baker
Special Counsel
Presidential Search Committee

enclosure

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Direct Telephone
272-4010

February 27, 1985

Dear LSC Recipient:

The Presidential Search Committee is in the process of narrowing the list of candidates for the position of President of LSC. When the finalists for the position have been selected, they will be invited to an interview with the Committee. In order to ensure that the concerns of LSC recipients and staff are addressed, the Committee is soliciting your assistance in preparing questions for the finalists.

Should you or your staff have questions that you would like directed to the candidates, put such questions in writing and send them to me. Your questions should be received by March 29, 1985.

Very truly yours,

Timothy H. Baker

Timothy H. Baker
Special Counsel
Presidential Search Committee

THB/jlq

Exhibit A

RESOLVED, that in addition to the requirement that the President of the Legal Services Corporation be a member of the bar of the highest court of a State, as set forth in section 1005(a) of the Legal Services Corporation Act of 1974 (Pub. L. 93-355), the Board of Directors of the Corporation hereby establishes as factors and qualifications to be considered in the selection of a President of the Legal Services Corporation, the following:

1. Good character.
2. Good reputation
   - (a) Public;
   - (b) Bar;
   - (c) Client community;
   - (d) Project groups;
   - (e) Congress.
3. Commitment to quality legal services for the poor.
4. Good Administrator
   - (a) Ability to organize;
   - (b) Leadership (ability to attract good subordinates);
   - (c) Ability to work with Board;
   - (d) Ability to delegate;
   - (e) Ability to deal with special problems of legal services programs:
     - (1) High staff turnover;
     - (2) Recruitment of minorities;
     - (3) Hostility from various areas;
     - (4) Inexperienced attorneys;
     - (5) High case load;
     - (6) Low salaries;
     - (7) Confrontation.
   - (f) Innovative;
   - (g) Good judgment;
   - (h) Diligence;
   - (i) Public presence;
   - (j) Ability to speak;
   - (k) Ability to write;
   - (l) Generally intelligent.
5. National visibility.
6. Experience
   - (a) Legal Services
   - (b) Practice
     - (1) Government;
     - (2) Civic;
     - (3) Politics;
     - (4) Miscellaneous.
7. Recommendations.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Bernstein (LAST) LeaAnne (FIRST) (Conner) (OTHER)

Position to which nominated: Board of Directors--Legal Services Corp Date of nomination: October 9, 1983

Date of birth: 22 February 1950 (DAY) (MONTH) (YEAR) Place of birth: Poplar Bluff, Missouri

Marital status: married Full name of spouse: Bryan Joseph Bernstein

Name and ages of children: Adam (8)

Asher (5)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Rushville Consolidated H.S.	1964-68	Diploma-Salutatorian	May 1968
Butler University	68-69,71-72	B.A.(cum laude)	June 1972
Indiana University	69-71	--	--
Ind.Univ. Law School at Indianapolis	73-77	J.D.(magna cum laude)	June 1977

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Butler University--full academic scholarship

Indiana State merit scholarship

Indiana University Foundation Scholarship

Ruel E. Steele Scholarship

Indiana Bell Telephone Company Scholarship

Lawson Scholarship

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
La Leche League		1976-current
Childbirth Educator Training Ass'n	Bd. of Advisors	1979-1980
American Bar Association		78-79, 82-83
Indiana State Bar Association		78-79
Rockland United Methodist Church		81-current
American Montessori Society		82-current
Montessori Society of Central Md.	Bd. of Directors (83-current)	81-current

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Standby Office Service; temporary clerical, Indianapolis, IN (6/72-9/72)
Teacher, high sch. English and performing arts, Decatur Central H.S., Indianapolis, IN (8/72-6/73)
Standby Office Service; temporary clerical, Indianapolis, IN (6/73-9/73)
Central Publishing Company; purchasing agent, estimator, administrative assistant, Indianapolis, IN (10/73-8/75)
Indiana Judicial Center; research assistant, editor, Indianapolis IN (8/75-7/76)
Indiana Court of Appeals; law clerk to Judge Robert H. Staton, Indianapol IN (8/76-8/78)
Indiana Supreme Court; law clerk to Justice Donald H. Hunter, Indianapol IN (8/78-5/79)
Private Practice, research, Indianapolis, IN (5/79-5/81)
College Park Association, word processing part time, Indianapolis, IN (7/80-1/81)
Marion County Department of Public Welfare, staff attorney (status offenses), Indianapolis, IN (11/80-3/81)
Adjunct faculty, Univ. of Maryland Baltimore County and Catonsville Community College; Baltimore, MD (business law, public speaking); (various semesters between 5/81-current)
Legal Services Corporation; ass't to president, Corporation Secretary, Washington, D.C. (1/81-7/84)
Private practice and consulting; (worked with the firm of Smiley, Olson, Gilman & Pangia from 7/84-current as one major client); (7/84-current)

Government experience:

List any advisory, consultative, honorary or other part time service or positions with Federal, State, or local governments other than those listed above.

Reader--Indiana Textbook Adoption Commission

Public Member—Administrative Conference of the United States

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Recent Development, Indiana Law Review, Volume 10, Number 3 (1977)

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Cash contribution to Clark for President campaign--1980 (husband's don'n

Guy Farley for Congress—$5.00

Ron Paul—$5.00

In the course of my legal work I have done work on a fee for service basis for attorney who represents various candidates and political committees.

Lawyers for Reagan (1984) (voluntary)

Future employment relationships

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

There is no conflict that I am aware of.

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No plans.

3. Has a commitment been made to you for employment after you leave Federal service?

No.

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes.

Potential conflicts of interest

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

Since my appointment to the Legal Services Corporation Board of Directors, I have responded to questions from various Senators and Congressmen and have invited comments regarding the operation of of the Corporation and its grantees.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I see no conflict of interest.

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202)

April 26, 1985

The Honorable Orrin G. Hatch
Chairman
Senate Committee on Labor and
Human Resources
SD 428, United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Enclosed are my responses to the questions submitted by Committee Members as a follow-up to the Committee's Confirmation Hearing on April 24, 1985.

Sincerely,

LeaAnne Bernstein

LeaAnne Bernstein
Member, Board of Directors

Enclosure

Questions from Senators Kennedy, Dodd, and Kerry for LeaAnne Bernstein

1. DO YOU THINK THE NEW LSC PRESIDENT MUST HAVE A COMMITMENT TO THE POOR AND TO LEGAL SERVICES FOR THE POOR WHICH HAS BEEN DEMONSTRATED BY PREVIOUS INVOLVEMENT IN POVERTY PROGRAMS OR LEGAL SERVICES?

   I do not believe that prior experience in a "poverty program" or an organized legal services program (federally funded or bar funded) is as important to an LSC president as a commitment to the human dignity of individual clients and a thorough understanding and embracing of a lawyer's professional responsibility.

2. DO YOU THINK THE LSC PRESIDENT SHOULD HAVE EXPERIENCE IN AND KNOWLEDGE OF LEGAL SERVICES PROGRAMS FOR THE POOR?

   Knowledge of the vast range of delivery mechanisms, funding sources, and political hurdles related to providing legal services to poor persons is crucial for the person chosen to be LSC president. Demonstrated managerial and human relations skills combined with fiscal and personal integrity are important to build a broad base of support for the program.

3. HOW IMPORTANT TO YOU IS IT THAT THE NEW PRESIDENT BE CAPABLE OF GAINING THE CONFIDENCE OF THOSE WHO WORK IN THE FIELD OFFICES OF LSC PROGRAMS?

   It is important that the LSC president be open to input from field programs, private attorneys, bar associations, community leaders, and Senators and United States Representatives so that many of the myths and misconceptions about the program can be dispelled through an educational communications process.

   a. WHAT TRAITS DO YOU THINK AN APPLICANT MUST HAVE IN ORDER TO WIN THAT CONFIDENCE?

      The human relations skills important to gain the confidence of all persons interested in the delivery of services to poor persons are basic: honesty, integrity, openness, and sincerity.

4. DO YOU SUPPORT CONTINUED FEDERAL FUNDING OF LEGAL SERVICES?

   Yes, until I am shown that another alternative would be better for clients.

5. WHAT LEVEL OF FEDERAL FUNDING DO YOU THINK IS NECESSARY TO MAINTAIN CURRENT SERVICE LEVEL IN FY 1986? FY 1987? AND FY 1988?

Since outside sources of funding and pro bono services have been on the increase since the Congressional budget reduction for LSC in 1982, current service levels should be maintained with the current budget figure of $305 million.

6. NOT WITHSTANDING ANY RESTRICTIONS CURRENTLY PLACED ON LEGAL SERVICES PROGRAMS, WHAT DO YOU PERSONALLY BELIEVE IS THE APPROPRIATE ROLE OF LEGAL SERVICES LAWYERS IN SERVING THEIR CLIENTS? IF YOU COULD START FROM THE BEGINNING AND FORM A NEW LEGAL SERVICES PROGRAM, WHAT WOULD YOU DO?

Federally funded legal services lawyers should serve individual clients fully within the bounds of any statutes, canons of ethics, and disciplinary rules guiding their practice.

If one were to "begin again" with the concept of providing legal representation to individuals who cannot afford to pay attorneys to procure representation, guiding principles should be:

a) preservation of client dignity and self-reliance
b) client-initiated service
c) promotion of attorney professional responsibility
d) redress of any legal grievance through most efficient mechanism available
e) absolute accountability for all taxpayer funding

Questions from Senator Simon for LeaAnne Bernstein

7. ADEQUATE FUNDING -- WILL YOU SUPPORT ADEQUATE APPROPRIATIONS FOR THE CORPORATION, IN AN AMOUNT SUFFICIENT TO PROVIDE THE SAME LEVEL OF SERVICE TO ALL ELIGIBLE PERSONS, ACCORDING TO THE 1980 CENSUS?

Yes, but I am currently studying the efficacy of annual updating rather than dicennial census data.

8. ROLE OF THE PRIVATE BAR -- WILL YOU RESIST EFFORTS TO SUPPLANT LEGAL SERVICES ATTORNEYS WITH REPRESENTATION FROM THE PRIVATE BAR, UNLESS YOU ARE ABSOLUTELY ASSURED THAT THE QUALITY OF LEGAL SERVICES AND THE COMMITMENT TO LEGAL AID FOR THE POOR WILL NOT BE DIMINISHED?

Yes, I have always maintained that quality service to client is my only concern -- not delivery modes.

9. AREAS OF LEGAL SERVICES ATTORNEYS PRACTICE -- WILL YOU WORK TO ASSURE THE CONTINUED EMPHASIS OF LEGAL SERVICES ATTORNEYS IN THE FOLLOWING PRINCIPAL AREAS OF PRACTICE: FAMILY LAW, HOUSING, INCOME MAINTENANCE AND CONSUMER CREDIT?

Yes, attorneys receiving federal monies must be constantly encouraged to focus on basic problems affecting poor persons.

Questions from Senator Dodd for LeaAnne Bernstein

10. EARLIER THIS MONTH THE GENERAL ACCOUNTING OFFICE (GAO) ISSUED A REPORT WHICH WAS EXTREMELY CRITICAL OF THE PROCESS BY WHICH THE LEGAL SERVICES CORPORATION RECENTLY GAVE GRANTS TO THREE NEW NATIONAL SUPPORT CENTERS. (SEE ATTACHED PAGES)

a. What can you tell us about the GAO report?

To my knowledge, the GAO report accurately presented the basic factual situation regarding the three questioned grants made during 1984, but it did not analyze in any complete way the pre-1982 grant procedures utilized within the Corporation, as requested by Chairman Rodino.

b. DO YOU AGREE WITH THE GAO THAT THERE SHOULD HAVE BEEN A NEEDS ASSESSMENT DONE BEFORE THE GRANTS WERE MADE?

I agree with GAO's consistent recommendations that all grants should not be automatically annualized but rather should be based on periodic needs assessments and competitive bidding process.

As I read the GAO report, the information request made by Chairman Rodino included: "LSC's grant-making procedures, such as performing a needs assessment and soliciting competitive bids, followed in establishing prior national support centers and the three new national support centers." (Emphasis added).

Since GAO did not examine the entire grant making history of the Corporation, in that respect its report was not at all complete and therefore its conclusions were, at best, stated out of context.

c. WAS PUBLIC NOTICE OF THE INTENTION TO ISSUE THOSE GRANTS LEGALLY REQUIRED?

Legal requirements are sometimes tempered by past accepted practices, but I would have favored issuing public notice in this instance in order to alleviate unnecessary controversy.

d. HOW DO YOU INTEND TO IMPLEMENT THE LAW?

I understand from LSC officials that a consistent procedure is being developed, in writing, to ensure that all future grants are made properly. I will monitor the effort to see that the procedure is developed rapidly.

Questions from Senators Kennedy, Dodd, and Kerry for LeaAnne Bernstein

11. LAST YEAR SENATOR RUDMAN EXPRESSED HIS OPINION THAT THE LEGAL SERVICES CORPORATION WAS ONE OF THE MOST MISMANAGED GOVERNMENT FUNDED PROGRAMS WITH WHICH HE WAS FAMILIAR. DO YOU AGREE OR DISAGREE WITH HIS ASSESSMENT OF LSC'S INITIATIVES OR REGULATIONS YOU BELIEVE THE 1984 BOARD UNDERTOOK OR ENACTED THAT IMPROVED THE DELIVERY OF LEGAL SERVICES TO POOR PEOPLE AND THE SPECIFIC MANNER IN WHICH THEY APPROVED THOSE SERVICES.

I am not familiar with all government funded programs, but as I understand Senator Rudman's underlying criticism of the management of LSC, it related specifically to a lack of sufficient communication and a perception that LSC was not responsive to Congressional interest. I am supportive of continued efforts to alleviate failings in this area, and I have personally solicited opportunities to discuss not only my role in the LSC Board, but also the Congressional and public concerns about LSC's future. Notwithstanding areas in which improvements in LSC management can be made, I believe that there were a number of positive initiatives made during 1983 and 1984 which will result in improved delivery of legal services to indigent persons. While the specific actions listed below are not all-inclusive, they represent a fair sampling.

a. Passage of a lobbying regulation which provided sufficient clarity to recipients of federal funds. The passage of this regulation was, in my view, an important signal to Congress that its will would not be ignored by LSC. The previous failure of the Corporation to pass a lobbying regulation containing specificity regarding prohibited activities had resulted in Congressional frustration and GAO criticism.

b. Implementation of research/delivery projects such as the private law firm project and the law school clinic project which were designed to provide needed services at a cost below that in existing programs while collecting valuable data regarding delivery systems and client satisfaction.

c. Support for local priority setting which would focus on previously unidentified legal needs of poor persons, especially those persons unable to be "squeaky wheels" in their communities. The passage of the revised priority setting regulation provided an additional mechanism for seeing that equal access is provided to rural and urban dwellers and that priorities, being locally set, are not static, but rather change as poverty populations shift.

d. Support for targeted funding for institutionalized elderly persons -- a group identified in Section 1007h of the LSC Act as possibly needing special attention. Specific funding for this group had been rejected by all previous LSC Boards.

e. Development of comprehensive monitoring and evaluation instruments so that a consistent and fair approach to administration would be used.

f. Establishment of a Native American desk which would report directly to the Director of the Office of Field Services. This initiative provided a mechanism for dealing with the unique problems of poor Native Americans and the attorneys representing them.

g. Established a more unified approach to information gathering from grantees so that unnecessary paperwork would be eliminated while all relevant data routinely need to respond to Congressional or GAO inquiries would be available. This process, begun with a revised refunding application, is continuing through the establishment of an advisory panel which will update the Case Service Reporting system for greater efficiencies and paperwork reduction.

12. IN DISCUSSING AT BOARD MEETINGS CONGRESS' REPROGRAMMING AUTHORITY YOU HAVE SUGGESTED THAT LSC's BOARD NEED NOT RESPOND TO CONGRESSIONAL CONCERNS. WHAT DO YOU BELIEVE TO BE THE PROPER RELATIONSHIP BETWEEN THE LSC BOARD AND CONGRESSIONAL COMMITTEES OR INDIVIDUAL SENATORS OR REPRESENTATIVES? AND HOW DO YOU THINK CONGRESS CAN ASSURE ITSELF THAT THE LSC BOARD WILL ATTEND TO ITS CONCERNS ABOUT VARIOUS ISSUES?

It is not my view that the Corporation should not or need not respond to Congressional concerns. The opposite is true. The Corporation must establish a position of mutual respect with Congress by acting in an open, communicative, responsible way. My concern is that the Corporation must be sensitive to its unique independence from political control. This is not to imply that the Board should not seek input from Congress or the White House. However, as an independent Board member, I must make the ultimate decision concerning the best posture for the Corporation, governed by the LSC Act and any Congressionally enacted restrictions. I believe the relationship between Board members and Congress should be one of communication and education. By mutual exchange of ideas and desires, Congress can assure itself that the LSC Board is aware of its concerns about various issues.

13. AT BOARD MEETINGS YOU HAVE SUGGESTED THAT SUFFICIENT RESOURCES EXIST TO MEET THE LEGAL NEEDS OF POOR PEOPLE WITHOUT THE EXISTENCE OF LEGAL SERVICES STAFF ATTORNEY PROGRAMS. WHAT ARE THOSE RESOURCES? WHAT TYPE AND QUANTITY OF LEGAL NEEDS DO THEY MEET, AND WHAT IS YOUR EXPERIENCE WITH THEM?

To my knowledge, I have not made the statement that sufficient resources do currently exist to meet all of the legal needs of poor people without the existence of legal services staff attorney programs. In fact, I have publicly and privately stated that I have an open mind on the most efficient delivery system. I believe, however, that there are untapped resources, and I would like to see the Board pursue whatever other avenues would result in maximizing services to our clientele.

Questions from Senator Kennedy for LeaAnne Bernstein

14. I AM INTERESTED IN EXPLORING TODAY YOUR ROLE IN THAT MEETING ["conference" on policy] AND IN THE AWARD OF THE GRANT TO THE CONSTITUTIONAL LAW CENTER. PLEASE EXPLAIN YOUR ROLE IN SETTING UP THIS MEETING AND SELECTING PARTICIPANTS FOR IT.

I had no role in setting up the Chicago conference. I was asked to come and participate in the discussion and present a preliminary draft of the NORC report. I did know in advance some of the persons who were to be invited, but I did not select any of those persons.

a. WHY WAS THERE NO PUBLIC NOTICE OF THIS "CONFERENCE" EITHER BEFORE OR AFTER IT WAS HELD?

There was no public notice of this meeting because it was a meeting of Corporation staff and consultants only. Had the meeting had a specific result (staff recommendation), there would have been no public announcement of the meeting, but there would have been a public dissemination of the policy if it were to be formally adopted by the Board. No Board member was present at that meeting.

b. WHY WERE NO LEGAL SERVICES PROGRAM OFFICIALS INVITED TO ATTEND AND PARTICIPATE?

Some of the concerns discussed involved court decisions which restricted the Corporation's abilities to impose grant conditions on programs. The discussions were to examine various options, including further litigation and appeals, to determine the issues. Legal services program officials would have been in an adversarial position on some of these issues, and their presence would have been inappropriate.

c. WHAT WERE THE CRITERIA UTILIZED TO SELECT PARTICIPANTS? DID ANY OF THESE NON-LSC ATTENDEES HAVE ANY CREDENTIALS OR EXPERIENCE IN LEGAL SERVICES WORK (OTHER THAN DEAN HARVEY)?

I do not know what criteria was used to select participants. I do not know enough of the background of the non-LSC attendees to know whether they had had experience in legal services work.

d. ACCORDING TO THE GAO, THERE SEEMS TO BE SUBSTANTIAL DISAGREEMENT AMONG THE PARTICIPANTS ABOUT WHETHER THE MAKING OF NEW SUPPORT CENTER GRANTS WAS DISCUSSED AT THIS MEETING. WHAT IS YOUR MEMORY ON THAT ISSUE?

My recollection is that there was a discussion about the fact that the National Clients Council had been discovered to have engaged in activities which might result in a defunding (a proceeding had been begun). There was a general discussion about whether another such group which would protect the interests of clients should be funded on a national level or whether local funding would be better. Support centers with substantive specialties had been funded at a national level for many years, but there had been no reevaluation of the substantive areas of support funding on the national level since the 1970's. During the portions of the meeting when I was present, there was not a discussion of soliciting grants, making grants, or otherwise funding new support centers.

e. WAS THERE A REPORT, OR MINUTES, OR ANY RECOMMENDATIONS TO LSC THAT GREW OUT OF THIS MEETING?

The only direct outcome of the meeting that I am aware of was a visit by Professor Hal Scott to Corporation headquarters during the weeks following the conference. The purpose of Professor Scott's visit was to consult on litigation strategy.

f. YOU HAVE SERVED AS SECRETARY TO THE LSC BOARD AND IN THAT CAPACITY HAVE INTERPRETED AND APPLIED THE GOVERNMENT IN SUNSHINE ACT. DO YOU THINK A MEETING OF THIS KIND SHOULD BE PUBLICLY NOTICED AND OPEN TO A PUBLIC PARTICIPATION GIVEN THE FACT THAT NEW LSC POLICY APPROACHES WERE BEING DISCUSSED?

No, for the reasons stated in b above.

15. IN SEPTEMBER OF 1984, ON THE LAST DAY OF THE FISCAL YEAR, LSC AWARDED GRANTS TO THREE NEW NATIONAL SUPPORT CENTERS WITHOUT ANY NOTICE OR COMMENT. GAO HAS CONCLUDED THAT LSC MADE NO ASSESSMENT OF THE NEED FOR NATIONAL SUPPORT IN THESE AREAS (AS HAD ALWAYS BEEN THE CASE IN THE PAST), AND THAT LSC VIOLATED ITS OWN ACT IN THE METHOD IT UTILIZED TO MAKE THESE GRANTS. I AM INTERESTED IN ASKING YOU ABOUT

YOUR ROLE IN AWARDING THESE GRANTS AND WHETHER YOU SEE ANY CONFLICTS OF INTEREST IN THE CIRCUMSTANCES HEADING UP TO THE GRANTS.

a. DEAN HARVEY AND THREE OF THE OTHER PARTICIPANTS AT THE FEBRUARY "CONFERENCE" ARE ON THE BOARD OF THE CENTER FOR JUDICIAL STUDIES, THE PARENT ORGANIZATION OF THE CONSTITUTIONAL LAW CENTER. DID DEAN HARVEY HAVE A ROLE IN THE AWARD OF THESE GRANTS?

To my knowledge Dean Harvey had no role in the award of the mentioned grants. He may have spoken with Corporation officials about the grant application, but he did not speak with me.

b. WERE YOU AWARE OF THE ACT's REQUIREMENTS THAT NOTICE BE PUBLISHED, AND IF SO, DID YOU RAISE THE IMPROPER NATURE OF THESE GRANTS WITH ANYONE AT LSC?

I was not aware that the grants were to be awarded or of the notice problem until at or after the time the grants were given. I believe that the first I heard of the problem having been raised was in very late September. At any rate, I was not a Corporation employee or Board member at that time.

c. IT IS MY UNDERSTANDING THAT NONE OF THESE NEW CENTERS HAVE BOARDS OF DIRECTORS WITH ELIGIBLE CLIENTS AS MEMBERS OF THE BOARD. IS THIS STILL TRUE? IF IT IS, DOESN'T THIS VIOLATE PROVISIONS OF THE LSC ACT? DO YOU THINK IT PROPER TO FUND AN ENTITY THAT IS NOT IN COMPLIANCE WITH THE LAW?

I do not know personally. It is my understanding that the new support centers do not have client representation on their governing boards at this time. I do not know whether they have been given a period during which they may come into compliance, but this would seem to be appropriate for a new entity. If they remain knowingly out of compliance after having been warned, then sanctions should be taken. I am not sure that defunding would be totally appropriate for this failure. If so, many current grantees, basic field, state support, and national support, are in direct violation of the LSC Act since their governing boards contain individuals who are also employees of recipients.

d. JAMES McCLELLAN, WHO IS A WELL-KNOWN CRITIC OF JUDICIAL ACTIVISM, WAS AN ATTENDEE AT THIS "CONFERENCE" AND IS NOW THE DIRECTOR OF THE CONSTITUTIONAL LAW CENTER. HIS BACKGROUND INDICATES NO INVOLVEMENT WITH LEGAL SERVICES PROGRAMS OR ISSUES. WHY WAS HE INVITED AND WHAT DID HE CONTRIBUTE TO THE "CONFERENCE?" WHY DID HE RECEIVE A GRANT FROM LSC?

I do not know why James McClellen was invited. The first time I met him was at the conference. I understand that he had worked on the Hill. His contributions to the conference were in the nature of legal analysis of options. I had nothing to do with the grantmaking, and therefore I do not know why he received a grant from LSC. I would presume that his application was deemed to be meritorious.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

e: Wallace (LAST) Michael (FIRST) Brunson (OTHER)

Position to which nominated: Director, Legal Services Corporation Date of nomination: January 3, 1985

Date of birth: 1 (DAY) Dec. (MONTH) 1951 (YEAR) Place of birth: Biloxi, Mississippi

Marital status: Married Full name of spouse: Barbara Childs Wallace

Name and ages of children:
Kyle Louise -- 3
Mary Caroline -- 1

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Harvard University	1969-73	B.A.	1973
University of Virginia	1973-76	J.D.	1976

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

National Merit Scholarship, Harvard National Scholarship
Alfred P. Sloan Scholarship, Order of the Coif, Virginia Law Review

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
Mississippi State Bar		1976 to date
Harrison County Bar		1976-83
Biloxi Jaycees	Director	1980

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

(1) Jones, Mockbee, Bass & Hodge, P. O. Box 55507, Jackson, MS 39216-1507 November 1983 to date, Associate

(2) Administrative Conference of the United States, 2120 L St. NW, Suite 500, Washington, D.C. 20037, Aug.-Oct. 1983, Legislative Consultant.

(3) Office of the House Republican Whip, 1622 Longworth HOB, Washington, D.C. 20515, Jan. 1981-July 1983, Counsel.

(4) House Republican Research Committee, 1616 Longworth HOB, Washington, D.C. 20515, July 1980-Jan. 1981, Research Analyst

(5) Sekul, Hornsby, Wallace & Teel, P. O. Box 548, Biloxi, MS 39533, July 1978-June 1980, Partner

(6) Supreme Court of the United States, Washington, D.C. 20543, July 1977-July 1978, Law Clerk to Associate Justice William H. Rehnquist

(7) Supreme Court of Mississippi, Jackson, MS 39205, July 1976-June 1977, Law Clerk to Justice Harry G. Walker.

(8) Markbys Solicitors, Moor House, London Wall, London, England, Summer 1975, Summer Associate.

(9) Office of the Chancery Clerk, Biloxi, MS 39530, Summer 1974, Reorganization of Land Records.

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Administrative Conference of the United States, May 1984 to date,

Member.

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

(1) Wallace & Stamps, Corporate Free Speech and Campaign Finance in Mississippi, 49 Miss. L.J. 819 (1978).

(2) Wallace, "The Constitutional Question," The Sun-Herald, Biloxi-Gulfport, Mississippi (Oct. 7, 1978).

(3) Wallace, "Ad Astra Sine Aspera: Chadha Transcends Adversity," Benchmark 13 (Fall, 1983).

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Harrison County Republican Executive Committee Member, 1980-84.

Harrison County Republican Club, Vice President, 1979-80.

Mississippi Young Republican Federation, General Counsel, 1979-80.

Harrison County Reagan for President Campaign, Co-Chairman 1980.

Mississippi Republican Convention, Delegate, 1980.

Hinds County Republican Convention, Delegate, 1984.
Contributions: 5/2/80, Harry G. Walker (Miss. Supreme Court)-$50.; 10/16/80, Campaign 80 (Miss. Republican Party)-$50; 4/27/81, John D. Preston (Ky. District Attorney)-$100.; 7/22/81, W. E. Tisdale (Miss. House of Representatives)-$100.; 9/12/82, Crockett Lindsey (Miss. Circuit Court)-$200.; 1984, Ray Mabus (Miss. Auditor)-$50.; 1984, David Armstrong (U.S. House of Rep.)-$25. 1984, Thad Cochran (U.S. [illegible]

[illegible] of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Not applicable

Circuit Court)-$200.; 1984, Ray Mabus (Miss. Auditor)-$50.; 1984, David Armstrong (U.S. House of Rep.)-$25.; 1984, Thad Cochran (U.S. Senate)-$100. [illegible]

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Not applicable

3. Has a commitment been made to you for employment after you leave Federal service?

Not applicable

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202)

April 26, 1985

The Honorable Orrin G. Hatch
Chairman
Senate Committee on Labor and
Human Resources
SD 428, United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Enclosed are my responses to the questions submitted by Committee Members as a follow-up to the Committee's Confirmation Hearing on April 24, 1985.

Sincerely,

Michael B. Wallace

Michael B. Wallace
Member, Board of Directors

Enclosure

Questions from Senators Kennedy, Dodd, and Kerry for Michael Wallace

1. DO YOU THINK THE NEW LSC PRESIDENT MUST HAVE A COMMITMENT TO THE POOR AND TO LEGAL SERVICES FOR THE POOR WHICH HAS BEEN DEMONSTRATED BY PREVIOUS INVOLVEMENT IN POVERTY PROGRAMS OR LEGAL SERVICES?

   I believe the president must have such a commitment. Previous involvement in such programs would be useful, but it is not the only way to demonstrate such a commitment.

2. DO YOU THINK THE LSC PRESIDENT SHOULD HAVE EXPERIENCE IN AND KNOWLEDGE OF LEGAL SERVICES PROGRAMS FOR THE POOR?

   I believe such a background would be very useful. It is possible that we may find an extraordinarily capable individual who can do the best job of the available candidates even without such a background.

3. HOW IMPORTANT TO YOU IS IT THAT THE NEW PRESIDENT BE CAPABLE OF GAINING THE CONFIDENCE OF THOSE WHO WORK IN THE FIELD OFFICES OF LSC PROGRAMS?

   It is essential that our new president gain the confidence not only of staff people in the field, but also of Congress, the organized bar, other lawyers, and the electorate as a whole.

   a. WHAT TRAITS DO YOU THINK AN APPLICANT MUST HAVE IN ORDER TO WIN THAT CONFIDENCE?

      The new president will have to be able to listen carefully to all of those groups whose confidence he must gain. He will have to digest all of their views rapidly and accurately. He will have to be able to explain and defend the decisions he makes on the basis of that analysis.

4. DO YOU SUPPORT CONTINUED FEDERAL FUNDING OF LEGAL SERVICES?

   Yes.

5. WHAT LEVEL OF FEDERAL FUNDING DO YOU THINK IS NECESSARY TO MAINTAIN CURRENT SERVICE LEVEL IN FY 1986? FY 1987? AND FY 1988?

   As Chairman Durant said during the hearings, the answer to that depends on the degree to which we are successful in encouraging private attorneys to contribute their efforts. I do support the budget request for FY 1986.

6. NOT WITHSTANDING ANY RESTRICTIONS CURRENTLY PLACED ON LEGAL SERVICES PROGRAMS, WHAT DO YOU PERSONALLY BELIEVE IS THE APPROPRIATE ROLE OF LEGAL SERVICES LAWYERS IN SERVING THEIR CLIENTS? IF YOU COULD START FROM THE BEGINNING AND FORM A NEW LEGAL SERVICES PROGRAM, WHAT WOULD YOU DO?

A legal services lawyer must be able to use the same methods in representing a client on a particular matter as would a private lawyer representing a paying client. In deciding the types of matters in which service will be provided, programs should concentrate on the sorts of basic needs which most paying clients go to lawyers to resolve, although other matters can also be appropriate.

As I testified, I believe the staff system is well suited to deal with most legal problems. If I were starting over, I would use the staff model, but I would emphasize from the beginning the need to use private attorneys in their areas of expertise. Twenty years ago, it may have seemed likely that enough money would eventually be available to deal with all needs through the staff system; that has not turned out to be the case. We should now concentrate on using the funds that are available to encourage voluntary efforts to supplement the staff system.

Questions from Senator Simon for Michael B. Wallace

7. ADEQUATE FUNDING -- WILL YOU SUPPORT ADEQUATE APPROPRIATIONS FOR THE CORPORATION, IN AN AMOUNT SUFFICIENT TO PROVIDE THE SAME LEVEL OF SERVICE TO ALL ELIGIBLE PERSONS, ACCORDING TO THE 1980 CENSUS?

Yes.

8. ROLE OF THE PRIVATE BAR -- WILL YOU RESIST EFFORTS TO SUPPLANT LEGAL SERVICES ATTORNEYS WITH REPRESENTATION FROM THE PRIVATE BAR, UNLESS YOU ARE ABSOLUTELY ASSURED THAT THE QUALITY OF LEGAL SERVICES AND THE COMMITMENT TO LEGAL AID FOR THE POOR WILL NOT BE DIMINISHED?

I do not want to supplant the staff system at all, but I do believe it is useful to supplement their efforts with the help of the private bar. Quality, of course, must be maintained.

9. AREAS OF LEGAL SERVICES ATTORNEYS PRACTICE -- WILL YOU WORK TO ASSURE THE CONTINUED EMPHASIS OF LEGAL SERVICES ATTORNEYS IN THE FOLLOWING PRINCIPAL AREAS OF PRACTICE: FAMILY LAW, HOUSING, INCOME MAINTENANCE AND CONSUMER CREDIT?

   As I told Senator Kerry at the hearing, I believe the primary emphasis of legal services attorneys should be in these areas, and I will work toward that end.

Questions from Senators Kennedy, Dodd, and Kerry for Michael Wallace

10. THE CURRENT APPROPRIATION PROVISIONS, PUB. L. 98-411, PERMIT RECIPIENTS TO USE LSC FUNDS TO COMMUNICATE DIRECTLY TO MEMBERS OF A LEGISLATIVE BODY UNDER CERTAIN LIMITED CIRCUMSTANCES. DO YOU AGREE THAT RECIPIENTS SHOULD BE ABLE TO USE LSC FUNDS TO REPRESENT THEIR CLIENTS UNDER THESE LIMITED CIRCUMSTANCES BEFORE A LEGISLATIVE BODY?

    Yes.

11. DO YOU BELIEVE THAT RECIPIENTS SHOULD BE ABLE TO USE LSC FUNDS TO SEEK PUBLIC FUNDS FROM STATE AND LOCAL LEGISLATIVE BODIES OR GOVERNMENT AGENCIES?

    No.

12. DO YOU BELIEVE THAT RECIPIENTS SHOULD BE ABLE TO USE PRIVATE FUNDS TO DIRECTLY REPRESENT ELIGIBLE CLIENTS BEFORE LEGISLATIVE BODIES?

    Yes, under the limited circumstances set forth in current law.

    a. TO SEEK PUBLIC FUNDS FROM STATE AND LOCAL LEGISLATIVE BODIES OR GOVERNMENT AGENCIES?

       No.

13. DO YOU BELIEVE THAT RECIPIENTS SHOULD BE ABLE TO USE LSC FUNDS TO REPRESENT ELIGIBLE CLIENTS IN A RULEMAKING PROCEEDING?

    Rulemaking proceedings so closely resemble legislation that I believe the use of LSC funds should be restricted along the same general lines as with legislative representation.

a. TO USE PRIVATE FUNDS TO REPRESENT ELIGIBLE CLIENTS IN A RULEMAKING PROCEEDING.

Yes.

14. DO YOU VIEW IT AS A LEGITIMATE GOAL FOR LEGAL SERVICES TO TRY TO RECRUIT A COMPETENT WORK FORCE THAT REFLECTS AND RESPONDS TO THE DIVERSITY OF THE CLIENTS TO BE SERVED, MANY OF WHOM ARE WOMEN, BLACKS, HISPANICS AND OTHER MINORITIES?

Yes.

15. RECOGNIZING THAT THE NUMBER OF MINORITY LAWYERS IS FAR BELOW THE PROPORTIONATE REPRESENTATION OF MINORITIES IN SOCIETY IN GENERAL, DO YOU FEEL THAT SITUATIONS MAY ARISE WHERE IN ORDER TO ATTRACT MINORITY LAWYERS TO A PROGRAM THEY MAY HAVE TO BE SPECIFICALLY RECRUITED?

I do not believe that it is necessary to employ minority lawyers to serve minority clients. Not all lawyers can adequately represent all clients, but good ones can, just as good Senators can represent all types of citizens.

16. DO YOU THINK A PROGRAM THAT SPECIFICALLY SEEKS AS PART OF ITS GOAL TO RECRUIT WOMEN AND MINORITIES MAY HAVE LEGITIMATE VALUE IN A PROGRAM OF THIS KIND?

No. The proper goal is to recruit lawyers, of whatever race or sex, who can properly represent minorities and women, as well as other clients.

17. IN THE TRANSCRIPT OF THE COMMITTEE ON APPROPRIATIONS AND AUDIT MEETING OF FEBRUARY 21st, YOU INDICATED THAT IN MAKING YOUR DECISION REGARDING THE FUTURE OF THAT PROGRAM THAT YOU WERE NOT INTERESTED IN THE MINORITY RECRUITING GOALS OF THE PROGRAM. DO YOU MEAN BY THAT STATEMENT THAT MINORITY RECRUITMENT IS NOT A LEGITIMATE GOAL? IF THAT IS WHAT YOU MEAN, CAN YOU TELL US WHY?

That is exactly what I mean. I am opposed to race-conscious government action, and I believe the law forbids it. We probably will find it necessary to recruit lawyers who can respond to the special circumstances of minority clients, especially those who speak little English. Those lawyers need not necessarily themselves be minority citizens.

Questions from Senator Dodd for Mr. Wallace

18. EARLIER THIS MONTH THE GENERAL ACCOUNTING OFFICE (GAO) ISSUED A REPORT WHICH WAS EXTREMELY CRITICAL OF THE PROCESS BY WHICH THE LEGAL SERVICES CORPORATION RECENTLY GAVE GRANTS TO THREE NEW NATIONAL SUPPORT CENTERS. (SEE ATTACHED PAGES)

    a. WHAT CAN YOU TELL US ABOUT THAT GAO REPORT?

    I have read it, but I had no involvement with the episode it relates.

    b. DO YOU AGREE WITH THE GAO THAT THERE SHOULD HAVE BEEN A NEEDS ASSESSMENT DONE BEFORE THE GRANTS WERE MADE?

    I believe some sort of needs assessment should have been done. I do not necessarily believe LSC should have done the same type of assessment done in the past. The law does not require a needs assessment.

    c. WAS PUBLIC NOTICE OF THE INTENTION TO ISSUE THOSE GRANTS LEGALLY REQUIRED?

    Yes.

    d. HOW DO YOU INTEND TO IMPLEMENT THE LAW?

    I intend to see that notice is properly given for all grants for delivery of legal assistance.

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

March 29, 1985

B-217872

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

Subject: Legal Services Corporation Grants to Establish Three New National Support Centers (GAO/HRD-85-54)

In response to your October 31, 1984, request and later discussions with your office, we are reporting on the Legal Services Corporation's (LSC's) September 30, 1984, award of grants to establish three new national support centers. Specifically, we agreed to provide information on:

- --LSC's grant-making procedures, such as performing a needs assessment and soliciting competitive bids, followed in establishing prior national support centers and the three new national support centers.
- --The origin of the grants and the individuals involved in any activities between LSC and representatives of the grantees leading to the award of the grants.

We reviewed the LSC act and other applicable laws, LSC's regulations and policies, LSC studies and documents, and grantees' documents. We interviewed present and former LSC officials responsible for establishing national support centers as well as officials from the three new national support centers. (Our objective, scope, and methodology are detailed in enc. I.)

Some of the information contained in the report is based on oral comments, which at times were contradictory and difficult to corroborate due to individuals' poor recollection of specific dates, time frames, events, or meetings.

In summary, we found that:

- --The LSC act and regulations are silent about whether the Corporation has to establish formal grant-making procedures, except that LSC is required, at least 30 days before approving a grant to initiate legal assistance, to publicly announce its intention to award the grant, and to request comments and recommendations.

- --LSC did not provide prior public notice of the three national support center grants. After the grant awards, LSC provided public notice and solicited comments on the three grants.

- --In the past, LSC established national support centers based on studies that assessed national support needs, and it solicited proposals for meeting these needs from existing national support centers, legal services programs, and other organizations.

- --In contrast, before the award of the three new national support center grants, LSC did not perform a needs assessment study, evaluate the legal assistance priorities identified by local legal services programs, or solicit proposals from existing national support centers or legal services programs.

- --The three grants were awarded on September 30, 1984, to reduce LSC's projected year-end carryover funds, even though the LSC act does not require the Corporation to spend its appropriated funds by the end of the fiscal year.

- --LSC funded the three grants from budget categories unrelated to national support centers. If funds had been transferred to the national support budget category, LSC's president said the Corporation would have been required to notify the House and Senate Appropriations Committees of a reprogramming of funds.

Enclosure I provides a detailed discussion of the results of our work.

- - - -

We did not obtain written comments on this report from LSC officials and other affected parties, nor did we discuss a draft of this report with them.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Uddo	Basile	Joseph
(LAST)	(FIRST)	(OTHER)

Position to which nominated: Legal Services Corp. Board

Date of nomination:

Date of birth: 22 (DAY) 4 (MONTH) 49 (YEAR)

Place of birth: New Orleans, Louisiana

Marital status: M

Full name of spouse: Anne C. Garlitz Uddo

Name and ages of children:
Joseph (9)
Paul (4)
Gregory (2)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Ridgewood Prep.	1954	Diploma	1966
Loyola University (N.O.)	1966	B.B.A.	1970
Tulane Law School	1970	J.D.	1973
Harvard Law School	1973	LL.M.	1974

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Teaching Fellow, Tulane Law School, 1972-73

Order of the Coif, Tulane Law School, 1973

Omicron Delta Kappa, Tulane Law School, 1973

Various Student Awards, Loyola University, 1966-70.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
American Bar Association		1973-79
Louisiana Bar Association		1973-Present
N.O. Right to Life Asso.	President	1980
" " " " "	Board of Director	1978-Present
Human Life Foundation	National Committee	1979-Present
American Family Inst.	Advisory Committee	1972-73
Sigma Alpha Kappa	President	1972-73

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1) Loyola Law School, New Orleans, LA, Assistant Professor, Associate Professor, Professor of Law 1975-Present

2) Liskow & Lewis, Attorneys at Law, New Orleans, LA, Associate, 1974-75

3) Boston University, School of Law, Boston, Massachusetts, Instructor, 1973-74

4) Uddo Company, New Orleans, LA, Director, Partner, Employee 1964-Present

Government experience: List any advisory, consultative, honorary or other part time service or positions with Federal, State, or local governments other than those listed above.

Research Consultant on Specified Projects for Louisiana Legislature - 1982 & 1983.

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

See Attached

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

None

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Does Not Apply

3. Has a commitment been made to you for employment after you leave Federal service?

No

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

My law school has received and will be eligible to receive grants from the Legal Services Corporation for its law clinic.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

I have consistently lobbied on behalf of all federal anti-abortion legislation, and against pro-abortion legislation. I have also lobbied for laws requiring treatment of handicapped newborns.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Recuse myself from such decisions.

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202)

April 26, 1985

The Honorable Orrin G. Hatch
Chairman
Senate Committee on Labor and
Human Resources
SD 428, United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Enclosed are my responses to the questions submitted by Committee Members as a follow-up to the Committee's Confirmation Hearing on April 24, 1985.

Sincerely,

Basile J. Uddo

Basile J. Uddo
Member, Board of Directors

Enclosure

Questions from Senators Kennedy, Dodd, and Kerry for Basile J. Uddo

1. DO YOU THINK THE NEW LSC PRESIDENT MUST HAVE A COMMITMENT TO THE POOR AND TO LEGAL SERVICES FOR THE POOR WHICH HAS BEEN DEMONSTRATED BY PREVIOUS INVOLVEMENT IN POVERTY PROGRAMS OR LEGAL SERVICES?

   I do believe that the new LSC president should have a commitment to the poor and to legal services for the poor. However, I do not agree that such a commitment can only be demonstrated by direct involvement in government poverty programs or legal services. I believe that a broad array of voluntary and charitable programs can demonstrate one's commitment to the poor. Therefore, I would look to a number of indicia to decide an applicant's commitment.

2 DO YOU THINK THE LSC PRESIDENT SHOULD HAVE EXPERIENCE IN AND KNOWLEDGE OF LEGAL SERVICES PROGRAMS FOR THE POOR?

   Yes, provided this question does not presuppose that legal services programs are only those funded by LSC.

3. HOW IMPORTANT TO YOU IS IT THAT THE NEW PRESIDENT BE CAPABLE OF GAINING THE CONFIDENCE OF THOSE WHO WORK IN THE FIELD OFFICES OF LSC PROGRAMS?

   Very important. But it is also important to me that the people in the field offices be realistic and cooperative in assessing the new president.

   a. WHAT TRAITS DO YOU THINK AN APPLICANT MUST HAVE IN ORDER TO WIN THAT CONFIDENCE?

      Integrity, candor and demonstrated commitment to the work of LSC.

4. DO YOU SUPPORT CONTINUED FEDERAL FUNDING OF LEGAL SERVICES?

   Yes.

5. WHAT LEVEL OF FEDERAL FUNDING DO YOU THINK IS NECESSARY TO MAINTAIN CURRENT SERVICE LEVEL IN FY 1986? FY 1987? AND FY 1988?

   That is impossible to predict at this point, but I would support whatever level is necessary given a mixed delivery system.

6. NOT WITHSTANDING ANY RESTRICTIONS CURRENTLY PLACED ON LEGAL SERVICES PROGRAMS, WHAT DO YOU PERSONALLY BELIEVE IS THE APPROPRIATE ROLE OF LEGAL SERVICES LAWYERS IN SERVING THEIR CLIENTS? IF YOU COULD START FROM THE BEGINNING AND FORM A NEW LEGAL SERVICES PROGRAM, WHAT WOULD YOU DO?

   The appropriate role is the zealous representation of the client within the bounds of the law and the Code of Professional Responsibility.

   If I could start from the beginning, I would more clearly emphasize direct delivery of services to individual clients.

Questions from Senator Simon for Basile J. Uddo

7. ADEQUATE FUNDING -- WILL YOU SUPPORT ADEQUATE APPROPRIATIONS FOR THE CORPORATION, IN AN AMOUNT SUFFICIENT TO PROVIDE THE SAME LEVEL OF SERVICE TO ALL ELIGIBLE PERSONS, ACCORDING TO THE 1980 CENSUS?

   Yes.

8. ROLE OF THE PRIVATE BAR -- WILL YOU RESIST EFFORTS TO SUPPLANT LEGAL SERVICES ATTORNEYS WITH REPRESENTATION FROM THE PRIVATE BAR, UNLESS YOU ARE ABSOLUTELY ASSURED THAT THE QUALITY OF LEGAL SERVICES AND THE COMMITMENT TO LEGAL AID FOR THE POOR WILL NOT BE DIMINISHED?

   Yes.

9. AREAS OF LEGAL SERVICES ATTORNEYS PRACTICE -- WILL YOU WORK TO ASSURE THE CONTINUED EMPHASIS OF LEGAL SERVICES ATTORNEYS IN THE FOLLOWING PRINCIPAL AREAS OF PRACTICE: FAMILY LAW, HOUSING, INCOME MAINTENANCE AND CONSUMER CREDIT?

   Yes.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: SMEGAL, JR. (LAST) Thomas (FIRST) Frank (OTHER)

Position to which nominated: Board of Directors Legal Services Corporation

Date of nomination: January 3, 1985

Date of birth: 15 (DAY) June (MONTH) 1935 (YEAR)

Place of birth: Eveleth, Minnesota

Marital status: Married

Full name of spouse: Susan Jane Smegal

Name and ages of children: Thomas -17
Elizabeth -14

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Michigan Technological University	1953/57	B.S.Chem.Eng.	June 1957
George Washington University	1957/61	J.D. Law	February 196

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

National Center for Youth Law/Youth Law Center Testimonial Dinner Honoree - 1985
American Bar Association Fellow
St. Thomas More Society Award - 1982
Who's Who in American Law
Who's Who in American Universities and Colleges
Tau Beta Pi Engineering Honorary Fraternity
Phi Eta Sigma Freshman Honorary Fraternity
Phi Kappa Phi Senior Honorary Fraternity
Phi Lambda Upsilon Chemical Honorary Fraternity
Blue Key Fraternity
Minnesota State Scholarship
Universal Oil Products Scholarship

Memberships: List below all memberships and offices held in professional, fraternal, business, schol civic, charitable and other organizations for the last five years and any other prior m berships or offices you consider relevant.

Organization	Office held (if any)	Dates
see attachment ①		

Employment record: List below all positions held since college, including the title or description of job, name employer, location of work, and dates of inclusive employment.

Dates	Firm & Address	Job Descript
9/65 to present	Townsend and Townsend One Market Plaza San Francisco, CA	Managing Par
11/62 to 8/65	Shell Development Co. Emeryville, CA	Practice of
4/61 to 10/62	U.S. Army Chemical Corps. Anniston, Ala.	Military Off
8/57 to 4/61	U.S. Patent Office Washington, D.C.	Patent Exami
6/57 to 8/57	U.S. Army Fort Campbell, KY	ROTC Summer

Government experience:

List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

U.S. State Department Delegation to Third Diplomatic Conference on the Revision of the Paris Convention for the protection of Industrial Property, WIPO, Geneva, October 1982;
World Intellectual Property Organization (WIPO) - Consultant on the grace period for prior disclosure of an invention before filing an application - Geneva, Switzerlar February 12/15, 1984;
U.S. State Department Delegation to Fourth Diplomatic Conference on the Revision of the Paris Convention for the protection of Industrial Property, WIPO, Geneva, March 1984.

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

American Patent Law Association "Management of an Intellectual Property Law Organization"; special issue of WIPO Magazine, October 1982.

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

See attachment ②

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Not applicable

3. Has a commitment been made to you for employment after you leave Federal service?

Not applicable

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Not applicable

Attachment ①

Attachment to Page 2 - Memberships

Organization	Office Held	Dates
Virginia State Bar	-	1961 to pres
District of Columbia Bar	-	1962 to pres
California State Bar	Vice Chair, Exec. Comm.	1964 to pres
	Board of Governors	1984 to pres
Bar Association of San Francisco	Secretary	1977
	Vice President	1978
	President	1979
American Patent Law Association	2nd Vice President	1982-83
	1st Vice President	1983-84
	President-Elect	1984-85
American Bar Association	Committee Activities	1965 to pres
St. Thomas More Lawyer Society	President	1974
National Center for Youth Law	Director	1978-84
Youth Law Center	President, Board of Dir.	1973-84
Legal Services for Children	Board of Directors	1980-1984
Legal Aid Society	Board of Directors	1968 to pres
	President	1982-84
Golden Gate Breakfast Club	President	1974
		1961 to pres
Delta Theta Phi Law Fraternity	President	1960
		1958 to pres
Kappa Delta Psi Social Fraternity	-	1954 to pres
East Bat Land & Cattle Association	President	1970
Commonwealth Club of California	-	1982 to pres
World Trade Club	-	1982 to pres
Olympic Club	-	1965 to pres
Claremont Country Club	-	1984 to pres
Athens Club	-	1962-70
San Francisco Patent Law Assoc.	President	1972
International Association of Intellectual Property Owners (AIPPI)	Director	1975 to pres
University Club	-	1982 to pre
Cerebral Palsy Center	Director	1972-81
George Washington Law Association	Director	1970, 1974,
Michigan Tech Fund	Director	1975 to pre
American Bar Association Foundation	-	1980 to pre

Attachment ②

Attachment to Page 3 - Political Affiliations and Activities

Helms for Senate - 1984/$50
Committee to Elect Connors - 1984/$50
Committee to Re-Elect Quentin Kopp - 1984/$50
Friends of Naylor - 1984/$50
Committee to Elect Wharton - 1984/$50
Republican National Committee contribution for 1984 - $150; 1983 - $28
    1981 - $100; 1980 - $150; 1979 - $50.
San Francisco Lawyers Committee for Better Government 1980 and 1982
    contributions $100 each; 1984 - $60.
Committee to Elect Bill Honig - 1982/$50
Hutchinson for Congress Committee - 1982/$200
Chiantelli for Judge - 1982/$100
Marks for Congress - 1982/$50
Nicholson for A.G. - 1982/$250
Committee to Elect Gyemant - 1981/$100
Arlo Smith Campaign - 1981/$125
ARPAC - 1981/$250
Judge Arata Campaign Committee - 1980/$100
Larry Washburn for Congress - 1980/$100
People for Joe Bort - 1980/$100
San Francisco Lawyers for Reagan/Bush - 1980/$50
Sullivan for Assembly - 1980/$50
Judge Schwartz Committee - 1980/$75

LAW OFFICES
TOWNSEND AND TOWNSEND

CHARLES E. TOWNSEND, JR.
ALBERT J. HILLMAN
THOMAS F. SMEGAL, JR.
PAUL W. VAPNEK
J. GEORG SEKA
ROGER L. COOK
RONALD SHELDON LAURIE
GEORGE M. SCHWAB
HENRY C. BUNSOW*
ROBERT C. COLWELL
DAVID N. SLONE
JAMES F. HANN
ELLIOT B. ARONSON
GAYLE HUTCHINS GOSSETT
GARY T. AKA
MARK A. STEINER
FRANCES G. SMITH
PAUL C. HAUGHEY
CAROLE F. BARRETT**
NOEMI C. ESPINOSA
THEODORE G. BROWN, III
ANTHONY B. DIEPENBROCK
DIRKS B. FOSTER
JOHN L. MCGANNON
WILLIAM MICHAEL HYNES*
BERTRAM I. ROWLAND
BRUCE W. SCHWAB
WARREN P. KUJAWA
ROBERT J. BENNETT
KENNETH R. ALLEN
WILLIAM L. ANTHONY, JR.
JOHN W. SCHLICHER
JAMES M. HESLIN
M. HENRY HEINES
KATHERINE C. SPELMAN
WILLIAM C. MILKS, III
CHARLES E. KRUEGER
E. LYNN PERRY
CASEY KEEG
GUY W. CHAMBERS
STEPHEN L. HURST

**NOT ADMITTED IN CALIFORNIA
*A PROFESSIONAL CORPORATION

STEPHEN S. TOWNSEND
OF COUNSEL

PATENTS, TRADEMARKS, AND COPYRIGHTS

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(415) 493-2590
TELECOPIER (415) 493-1753

CHARLES E. TOWNSEND (1904-1944)

April 29, 1985

Kevin S. McGuiness, Esq.
Counsel for Senate Committee on Labor
and Human Resources
Room 420
Senator Dirkson Building
Constitution Avenue North East
Washington, D.C. 20510

Re: Senatorial Questions Involving Legal Services Corporation Board Confirmation Hearings

Dear Kevin:

Enclosed are my answers to questions from Senator Simon and other Democratic senators on the Labor and Human Resources Committee.

Very truly yours,

Thomas F. Smegal, Jr.

TFS/bp
encl.
cc Paul McNulty

1. Adequate funding -- Will you support adequate appropriations for the Corporation, in an amount sufficient to provide the same level of service to all eligible persons, according to the 1980 census?

Answer: Yes, in fact, both at the LSC Board meetings on December 20, 1984, and on March 8, I proposed that the LSC FY 1986 appropriation be substantially increased above the $305 million that had been appropriated in FY 1985. Unfortunately, less than a majority of my fellow Board members share that view. However, I continue to try to persuade other Board members that funding cannot be maintained at fiscal year 1985 levels without a devastating erosion of existing programs. The levels of funding required to provide adequate legal services at the "minimum access" standard, established a number of years ago jointly through the efforts of the organized bar and Congress, are many years away, even with modest increases for FY 1986.

2. Role of the private bar -- Will you resist efforts to supplant legal services attorneys with respresentation from the private bar, unless you are absolutely assured that the quality of legal services and the commitment to legal aid for the poor will not be diminished?

Answer: From my 20 years of involvement in the delivery of legal services to poor people, I have concluded that it is essential for any delivery system to be grounded in programs staffed by full time legal service attorneys. While I am encouraged that the private bar will provide services through various other programs, including significant pro bono activities, I am of the view that such programs will flounder and/or will not grow unless we have the ongoing example and guidance provided by staff programs. In addition, the contribution and sacrifice being made by staff legal services attorneys (in terms of career development and lost salary) provides a motivation to encourage non-legal service lawyers to make pro bono contributions to civil legal services for poor people.

3. Areas of legal service attorneys practice -- Will you work to assure the continued emphasis of legal services attorneys in the following principal areas of practice: family law, housing, income maintenance and consumer credit?

Answer: Yes, I will continue to work assure that legal services are provided in family law, housing, income maintenance and consumer credit, as well as other critically important areas to representation of poor people.

4. Do you think the new LSC president must have a commitment to the poor and to legal services for the poor which has been demonstrated by previous involvement in poverty programs or legal services?

Answer: While it is possible that there may be a potential LSC president whose background does not include the actual involvement in poverty law programs or legal services programs, I have yet to see such a resume in reviewing present applicants for the position of LSC president. In my view, it is absolutely essential for the new LSC president to have not only an actual understanding of the delivery of legal services to poor people, but a hands-on involvement demonstrated by a significant delivery of such services.

5. Do you think the LSC president should have experience in and knowledge of legal services programs for the poor?

Answer: In additon to the answer I have provided with respect to question 4, it is critical that the new LSC president have experience with, and knowledge of, legal services programs for the poor. One of the difficulties the immediate past president had, was a perception from those concerned with the delivery of legal services, that he did not appreciate and understand the particulars of delivery of legal services.

6. How important to you is it that the new president be capable of gaining the confidence of those who work in the field offices of LSC programs?

Answer: If the new president is unable to gain the confidence of those working in the field offices of the LSC programs, he will be totally ineffective in that position. In my view, the bipartisan Congressional support for the LSC program is so significant that unless the new president can demonstrate to the LSC field office lawyers, that he or she is capable of directing this program in the manner intended by Congress, such a person will be a complete failure in handling that position. A further disadvantage will be a lack of Congressional confidence in the Board of Directors who have chosen a president incapable of gaining such confidence from those in the day-to-day delivery of legal services to the poor.

a. What traits do you think an applicant must have in order to win that confidence?

Answer: Among the traits that I think are of most importance to an applicant are demonstrated involvement with the delivery of legal services to poor people, whether pro bono legal representation or administration and/or support of various delivery mechanisms through board activities. In addition, I think it is important that the individual have demonstrated managerial experience. While it would also be beneficial that one have practised law in the sense of trial experience, in my view, that is not of critical importance to one who would assume the responsibilities of president of LSC.

7. Funding -- Do you support continued Federal funding of legal services?

Answer: As I have indicated in my answer to question 1, I am absolutely committed to supporting a legal services program that has Federal funding as its essential building block.

8. What level of Federal funding do you think is necessary to maintain current service levels in FY 1986? FY 1987? and FY 1988?

Answer: As an absolute minimum to maintain FY 1985 service levels, an increase in Federal funding of at least 4.6% is clearly required. While this amount would involve about $14 million above FY 1985 funding of $305 million, in order to re-establish the agreed-upon formula for minimum access (two lawyers for every 10,000 indigents), a substantially greater amount of Federal funding will be required. While I proposed at our LSC December 20 Board meeting that the budget mark be $373 million, a funding increase estimated to be necessary to allow the program one-third of the way to re-establishing minimum access by FY 1988, it appears that the realities of the FY 1986 Federal budget won't provide an increase of $68 million. Under the circumstances, I believe that an increase of $25-35 million would provide a dramatic signal (to those dedicated lawyers in the legal services community) that this program continues to be fully supported by Congress. Such an increase would encourage such legal service lawyers to continue to make the sacrifices they have made in terms of career and economic advantages.

9. Philosophy -- Notwithstanding any restrictions currently placed on legal services programs, what do you personally believe is the appropriate role of legal services lawyers in serving their clients? If you could start from the beginning and form a new legal services program, what would you do?

Answer: Having spent 20 years involved in the delivery of legal services to poor people through various mechanisms, including the organized bar pro bono activities, I am not of the view that the concept of delivery of legal services must be drastically changed. As one who specializes in a particular area of the law, I have long recognized the advantages of being an expert in a relatively specific area of law. In this regard, I have worked with LSC staff lawyers who are experts. Because of that uniqueness, they are able , in my view, to perform their legal representation very efficiently and effectively. By leveraging out such specialized staff lawyers, through the less predictable availability of volunteer and low fee lawyers, the LSC funding can be multiplied beyond the actual dollars available were staff lawyers to be utilized in all such representation.

I am certainly concerned about the scope of activities of a small number of LSC-funded lawyers and believe that there must be adherence to the LSC Act, as it has been modified through Congressional appropriation riders. For example, in my view, lobbying need not be performed by lawyers as there are many others who are equally proficient in persuading legislators to improve our legal system. Similarly, neighborhood dispute resolution programs can be staffed by non-lawyers. More particularly, such programs do not necessarily require significant involvement of legal service funded lawyers. However, in circumstances where a lawyer is required, I believe that eligible clients are entitled to have LSC lawyers represent them within the established code of ethics, in obtaining the legal result to which the individual client is entitled.

In those circumstances where the client's specific legal matter is one that is repeated among a readily definable client group, I am also of the view that class action proceedings are entirely appropriate and consistent with the philosophy behind the LSC Act.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Miller (LAST) Lorain (FIRST) (OTHER)

Position to which nominated: Legal Services Corp. Board Member Date of nomination:

Date of birth: 12 (DAY) 15 (MONTH) 34 (YEAR) Place of birth: Hazard Kentucky

Marital status: Widowed Full name of spouse: (Frist Divorced From: Marcellas Charles Moore I Widowed From: Thomas George Miller

Name and ages of children: Gwendolyn Jean Moore 32 Andre Pierre Miller 25 Rhoda Lisha Mil
Thomas George Miller 28 Crystal Tina Miller 24 Jacque Lynn M
DuAyne Michelle Miller 26 Rodney Shawn Miller-17

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Duffield Elementary	1943-1949		
Detroit, Mich			
Miller High School	1949-1951		
Detroit, Mich.			
Wayne County Community	1982-1983		
College - Detroit Mi.			

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

None

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
Community Council of		
Scripps School		1975--1977
The Community Committee		
the Y.M.C.A Of Detroit		1978-Present

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

18 Green Bar-B-Que, Mack Ave, Detroit Waitress

1 8-32 Red Devil Restaurant, Finkel Detroit Bus Girl

25-32 Rooster Tail Super Club, Marquette Dr Detroit Kitchen Help

34-35 Gissical Drapers, Seven Mile Rd, Detroit Seamstress

38-46 Y.M.C.A. Harper, Detroit Supervisor of Day Care, Youth Lobb. & Senior Citizen Program

Government experience:

List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

None

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

I volunteered My services off and on over a period of years For the democratic candidates.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

N/A

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

N/A

3. Has a commitment been made to you for employment after you leave Federal service?

N/A

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conficts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

None

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202)

April 26, 1985

The Honorable Orrin G. Hatch
Chairman
Senate Committee on Labor and
Human Resources
SD 428, United States Senate
Washington, D.C. 20510

Dear Senator Hatch

Enclosed are my responses to the questions submitted by Committee Members as a follow-up to the Committee's Confirmation Hearing on April 24, 1985.

Sincerely,

Lorain Miller

Lorain Miller
Member, Board of Directors

Enclosure

Questions from Senators Kennedy, Dodd, and Kerry for Lorain Miller

1. DO YOU THINK THE NEW LSC PRESIDENT MUST HAVE A COMMITMENT TO THE POOR AND TO LEGAL SERVICES FOR THE POOR WHICH HAS BEEN DEMONSTRATED BY PREVIOUS INVOLVEMENT IN POVERTY PROGRAMS OR LEGAL SERVICES?

   Yes, but the new president must be open to ways that do a better job.

2. DO YOU THINK THE LSC PRESIDENT SHOULD HAVE EXPERIENCE IN AND KNOWLEDGE OF LEGAL SERVICES PROGRAMS FOR THE POOR?

   Yes.

3. HOW IMPORTANT TO YOU IS IT THAT THE NEW PRESIDENT BE CAPABLE OF GAINING THE CONFIDENCE OF THOSE WHO WORK IN THE FIELD OFFICES OF LSC PROGRAMS?

   Very important. If the new president does not have the confidence of those who work in the field offices of LSC programs, then he should not be president.

   a. WHAT TRAITS DO YOU THINK AN APPLICANT MUST HAVE IN ORDER TO WIN THAT CONFIDENCE?

      The new president must have the discretion to handle confidential information, have leadership skills, have an open mind in various situations, have the ability to make independent judgments, and the ability to communicate and interact with all: LSC staff, clients, field offices, and all interested parties.

4. DO YOU SUPPORT CONTINUED FEDERAL FUNDING OF LEGAL SERVICES?

   Yes.

5. WHAT LEVEL OF FEDERAL FUNDING DO YOU THINK IS NECESSARY TO MAINTAIN CURRENT SERVICE LEVEL IN FY 1986? FY 1987? AND FY 1988?

   For FY 1986, I voted for a $305 million funding level. Before I can give an answer for FY 1987 and FY 1988, I would like to see the results for this year and next. However, we should go at least with the level of inflation.

6. NOT WITHSTANDING ANY RESTRICTIONS CURRENTLY PLACED ON LEGAL SERVICES PROGRAMS, WHAT DO YOU PERSONALLY BELIEVE IS THE APPROPRIATE ROLE OF LEGAL SERVICES LAWYERS IN SERVING THEIR CLIENTS? IF YOU COULD START FROM THE BEGINNING AND FORM A NEW LEGAL SERVICES PROGRAM, WHAT WOULD YOU DO?

   I would give my legal services clients the same services I would give my paying clients. I would give the very best service I know how.

The first thing I would do, if I could start from the beginning, is that I would put my clients in some kind of work program, even if only for two or three hours a week. Even if there was a problem with a person's health, there is always something they could do, like making phone calls to sick and shut-in. There are all kinds of work that could be done to help pay the lawyers' fees. I think there are all kinds of ways to make a program pay for itself. Working for it is one way. Most of all, we must keep the poor clients in mind.

Questions from Senator Simon for Ms. Miller

7. ADEQUATE FUNDING -- WILL YOU SUPPORT ADEQUATE APPROPRIATIONS FOR THE CORPORATION, IN AN AMOUNT SUFFICIENT TO PROVIDE THE SAME LEVEL OF SERVICE TO ALL ELIGIBLE PERSONS, ACCORDING TO THE 1980 CENSUS?

   Yes. I strongly support adequate federal funding for legal services and fair distribution among the programs so that poor people in all parts of the country can get the assistance they need.

8. ROLE OF THE PRIVATE BAR -- WILL YOU RESIST EFFORTS TO SUPPLANT LEGAL SERVICES ATTORNEYS WITH REPRESENTATION FROM THE PRIVATE BAR, UNLESS YOU ARE ABSOLUTELY ASSURED THAT THE QUALITY OF LEGAL SERVICES AND THE COMMITMENT TO LEGAL AID FOR THE POOR WILL NOT BE DIMINISHED?

   Yes. Private lawyers and legal services programs should work together and cooperate in the delivery of legal assistance to our clients, and we must see to it that the quality of legal services is as high as possible.

9. AREAS OF LEGAL SERVICES ATTORNEYS PRACTICE -- WILL YOU WORK TO ASSURE THE CONTINUED EMPHASIS OF LEGAL SERVICES ATTORNEYS IN THE FOLLOWING PRINCIPAL AREAS OF PRACTICE: FAMILY LAW, HOUSING, INCOME MAINTENANCE AND CONSUMER CREDIT?

   The areas of legal assistance you must emphasize, family law, housing, income maintenance and consumer credit are the same as I would emphasize. Each program, however, has to have some flexibility to set its own priorities based on the needs in its service area

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

me: Benavidez (LAST) Hortenzio (FIRST) CRUZ (OTHER)

Position to which nominated: Board of Director of Legal Svc Corp Date of nomination: January 1985

Date of birth: 10 (DAY) October (MONTH) 1931 (YEAR) Place of birth: EL PASO, TEXAS

Marital status: Single Full name of spouse: —

Name and ages of children: —

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Lincoln School	1938 - 1944	GRADE school certificate	
Burleson School	1945 - 1946		
Bowie High School	(Jan. - may 1946 - 1946	No degress in High School	
EL PASO TECHNICAL INSTITUTE	(sept 1946 To may 1950)	High School Diploma	
KANSAS CITY BUS. College	(Approx 1957)	Refresher	Course in Shorthand
Durham Business College	(approx 1960)	Keypunch,	Shorthand Typing.

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

A certificate in Shorthand Class

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
OUR LADY OF GUADALUPE PRAYER GROUP	MEMBER OF THE Board of Directors	1980 to 1985
OUR LADY YOUTH CENTER	MEMBER	1975 to 1985

Employment record: List below all positions held since ~~college~~ HIGH School, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

KRESS SALES CLERK MESA AVE EL PASO, TX. July-Dec 1950

GREEN SIRY Office Clerk WALNUT ST [illegible] APPROX 9 YRS 1951-1959

TIME-DC Filing clerk / TWX OPERATOR / Dispatcher / Billing Clerk DURAZNO ST EL PASO, TX. 1960 - 1964

Daniel Mot. Bookkeeper El PASO, TX. 1964 (3 months)

BRASWELL Motor C.O.D. Clerk EL PASO TX. 1964-1968

Silver Frt Line Billing Clerk EL PASO TX 1968

C-B TRUCK LINE Billing Clerk EL PASO, TX ↓

C.R.C. FRT. LINE CASHIER + CUSTOMER SVC. EL PASO, TX

McLean Trk Line CASHIER - CUSTOMER SERVICE EL PASO, TX 1980

COTH... ~~[illegible]~~ Secretary General Office EL PASO, TX 1981-1985

Libreria de Guadalupe Sales Clerk EL PASO, TX as needed since 1980 ~~part~~ time

Silver Frt Line sold out to C.B
C.B sold out to CRC
C.R.C sold out to McLean Truck Line
AND I remained working with these companies until 1980

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

None

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

None

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

IF NECESSARY, YES

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

YES

3. Has a commitment been made to you for employment after you leave Federal service?

NO

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

NONE

3. Describe any business relationship, dealing or financial transaction which you have ha during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which yo have been nominated.

[illegible]

4. List any lobbying activity during the past 10 years in which you have engaged for t purpose of directly or indirectly influencing the passage, defeat or modification of a Federal legislation or of affecting the administration and execution of Federal law policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclose your responses to the above items.

[illegible]

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202)

April 26, 1985

The Honorable Orrin G. Hatch
Chairman
Senate Committee on Labor and
   Human Resources
SD 428, United States Senate
Washington, D.C.   20510

Dear Senator Hatch:

Enclosed are my responses to the questions submitted by Committee Members as a follow-up to the Committee's Confirmation Hearing on April 24, 1985.

Sincerely,

Hortencia Benavidez
Hortencia Benavidez
Member, Board of Directors

Enclosure

Questions from Senators Kennedy, Dodd, and Kerry for Hortencia Benavidez

1. DO YOU THINK THE NEW LSC PRESIDENT MUST HAVE A COMMITMENT TO THE POOR AND TO LEGAL SERVICES FOR THE POOR WHICH HAS BEEN DEMONSTRATED BY PREVIOUS INVOLVEMENT IN POVERTY PROGRAMS OR LEGAL SERVICES?

   A commitment to the poor is important, but there are many ways to demonstrate that commitment. The new LSC president, like any corporation president, must be a good, responsible manager.

2. DO YOU THINK THE LSC PRESIDENT SHOULD HAVE EXPERIENCE IN AND KNOWLEDGE OF LEGAL SERVICES PROGRAMS FOR THE POOR?

   That would be very helpful, but a commitment to serving the poor is more important.

3. HOW IMPORTANT TO YOU IS IT THAT THE NEW PRESIDENT BE CAPABLE OF GAINING THE CONFIDENCE OF THOSE WHO WORK IN THE FIELD OFFICES OF LSC PROGRAMS?

   Very important.

   a. WHAT TRAITS DO YOU THINK AN APPLICANT MUST HAVE IN ORDER TO WIN THAT CONFIDENCE?

      A commitment to providing legal services to the poor, a willingness to listen to and meet with field office people, and the ability to manage the Corporation so that it is responsive to field offices inquiries and needs.

4. DO YOU SUPPORT CONTINUED FEDERAL FUNDING OF LEGAL SERVICES?

   Yes.

5. WHAT LEVEL OF FEDERAL FUNDING DO YOU THINK IS NECESSARY TO MAINTAIN CURRENT SERVICE LEVEL IN FY 1986? FY 1987? AND FY 1988?

   I voted for $305 million for 1986. I do not know at this time for 1987 and 1988.

6. NOT WITHSTANDING ANY RESTRICTIONS CURRENTLY PLACED ON LEGAL SERVICES PROGRAMS, WHAT DO YOU PERSONALLY BELIEVE IS THE APPROPRIATE ROLE OF LEGAL SERVICES LAWYERS IN SERVING THEIR CLIENTS? IF YOU COULD START FROM THE BEGINNING AND FORM A NEW LEGAL SERVICES PROGRAM, WHAT WOULD YOU DO?

   Legal services lawyers should serve their clients the same way any attorney would serve his client.

   I support the current program.

Questions from Senator Simon for Ms. Benavidez

7. ADEQUATE FUNDING -- WILL YOU SUPPORT ADEQUATE APPROPRIATIONS FOR THE CORPORATION, IN AN AMOUNT SUFFICIENT TO PROVIDE THE SAME LEVEL OF SERVICE TO ALL ELIGIBLE PERSONS, ACCORDING TO THE 1980 CENSUS?

   Yes. Funding which will insure legal assistance to our nation's poor is my highest priority.

8. ROLE OF THE PRIVATE BAR -- WILL YOU RESIST EFFORTS TO SUPPLANT LEGAL SERVICES ATTORNEYS WITH REPRESENTATION FROM THE PRIVATE BAR, UNLESS YOU ARE ABSOLUTELY ASSURED THAT THE QUALITY OF LEGAL SERVICES AND THE COMMITMENT TO LEGAL AID FOR THE POOR WILL NOT BE DIMINISHED?

   The guarantee of equal justice for all can only be a reality if we demand quality legal assistance. This is the responsibility of LSC.

9. AREAS OF LEGAL SERVICES ATTORNEYS PRACTICE -- WILL YOU WORK TO ASSURE THE CONTINUED EMPHASIS OF LEGAL SERVICES ATTORNEYS IN THE FOLLOWING PRINCIPAL AREAS OF PRACTICE: FAMILY LAW, HOUSING, INCOME MAINTENANCE AND CONSUMER CREDIT?

   Information I have received indicates that these types of legal problems are the areas of demonstrated need. Therefore, I will certainly work to insure responsiveness to the needs of eligible clients.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

me: EAGLIN (LAST) PAUL (FIRST) BRADFORD (OTHER)

Position to which nominated: Board of Dir., Legal Svcs. Corp.

Date of nomination: January, 1985

Date of birth: 10 August 1948 (DAY) (MONTH) (YEAR)

Place of birth: Baltimore, Maryland

Marital status: single

Full name of spouse:

Name and ages of children:

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Duke Univ. Law School	1974-76	J.D.	Dec. 1976
Johns Hopkins Univ.	1966-70	B.A.	May 1970
E.E.Smith Sr. H.S. (Fayetteville, N.C.)	1964-66	diploma	June 1966

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Army ROTC Scholarship 1968-70

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (If any)	Dates
See attached list	(three pages)	

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

See attached list (two pages)

Government experience:

List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Fayetteville Revitalization Commission, 1979-82 (Vice-Chm., 1981)

Fayetteville Historic Properties Commission, 1981-82

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

(1) for financial contributions, see attached photocopies of bank checks.

(2) see attached list

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

no

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

not applicable

3. Has a commitment been made to you for employment after you leave Federal service?

not applicable

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

none

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

none

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

none

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

none

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

not applicable

3 12 85
Paul B

MEMBERSHIPS (Page 2)

NAME AND ADDRESS	TYPE	DATES	OFFICE HELD
Pershing Rifles ROTC Military Fraternity Johns Hopkins University, Baltimore, Maryland	Fraternity	1967-1970	member
Dormitory Student Residents Council Johns Hopkins University, Baltimore, Maryland	Student's Council	1967-1968	member Vice-Pres.(? 1968
Association of the U.S. Army (?) Washington, DC (?)	professional	1971(?)-74(?)	member
Legal Research Program School of Law, Duke University, Durham, NC	research	1975-Dec.1976	Editor, 1976
N.C. Bar Association eigh, North Carolina	service & professional	1976-present	member
--Chairman, Law Student Activities Committee,		1982-1983	
--Member, Section on Commercial Banking and Business Law			
American Bar Association Chicago, Illinois	professional	1978(?)	member
N.C. Association of Black Lawyers Durham, North Carolina NCCU Law School	professional	1976-81 1982-83	member
Cumberland County (NC) Bar Association Fayetteville, North Carolina	professional	1977,1979-present	member
Fayetteville N.C Revitalization Commission	civic	1979-1982	Vice-Chair
Arts Council of Fayetteville/ Cumberland County, Inc Board of Directors	civic	1981-1984	Vice-Presi President (
Je Fayetteville N.C. Association	civic	1981-1983	member
National Organization of Social Security Claimants' Representatives Pearl River, New York	professional	1981-~~present~~ 1983	member
[illegible]	[illegible]	[illegible]	member

3-12-85

MEMBERSHIPS (Page 2)

YMCA Personnel Committee Ft. Bragg Road Fayetteville, North Carolina 28303	civic	1981-83	member
Board of Directors Cumberland Community Foundation, Inc. Fayetteville, North Carolina 28302	civic	1983-1985	Director
Friends of the Library, Inc. Cumberland County N.C. Library Fayetteville, North Carolina 28302	civic	1983-1984	Board of Dir
Alumni Schools Committee Johns Hopkins University North Carolina Chapter	civic & alumni	1974-present	member
N.C. Association of Trial Lawyers Fayetteville Street Mall, Raleigh, North Carolina	professional	1977(?)-1984 present	member
National Soccer Coaches Association of America, Route 5, Box 5074 Stroudsburg, Pennsylvania 18360	Recreational	1983-present	member
Fayetteville, YMCA Youth Soccer Coach	Recreational	1980-present	member
U.S. Soccer Federation New York, New York	Recreational	1983-present	referee
NAACP Remsen Street Brooklyn, New York	civic	1979-1983	member
U.S. Court of Appeals (4th Cir.) Richmond, Virginia	professional	1981-present	Bar member
U.S. District Court (E.D.N.C.) Raleigh, North Carolina	professional	1977-present	Bar member
U.S. District Court (MDNC) Greensboro, North Carolina	professional	1977-present	Bar member
U.S. Court of Military Appeals Washington, D.C.	professional	1976-present	Bar member
U.S. Supreme Court Washington, D.C.	professional	1980-present	Bar member
N.C. State Bar Fayetteville Street Mall Raleigh, North Carolina	professional	1966-present	member

3/12/85

3

MEMBERSHIPS (Page 2)

Duke University Alumni Association Durham, North Carolina	alumni	1976-present	member
Johns Hopkins Alumni Association Baltimore, Maryland	alumni	1970-present	member
Cape Fear Registry of Interpreters for the Deaf Fayetteville, North Carolina	civic	1981-~~present~~ 1983	member
The Lafayette Society, Inc. Westmont Drive Fayetteville, North Carolina	civic	1981-~~present~~ 1983	member
Fayetteville Business and Professional League Fayetteville, North Carolina	civic	1979-1980	member
North Carolina Soccer Referees Association Chapel Hill, North Carolina 27514	recreational	1983-present	member
utheastern Athletic Officials Assoc. .ost Office Box 40101 Fayetteville, North Carolina 28304	recreational	1983-present	member

Paul B Eagin

EMPLOYMENT (Page 2)

	EMPLOYER & ADDRESS	TYPE OF WORK	REASON FOR LEAVI
AUGUST, 1979-Present	COOPER, DAVIS & EAGLIN PARTNER Suite 903, Wachovia Bldg. Post Office Drawer 1598 Fayetteville, NC 28302	ATTORNEY	N/ax accept Methodist College position
January, 1979-August 3, 1979	Associate of Atty. Arthur L. Lane 273 Gillespie Street Post Office Box 675 Fayetteville, NC 28302	Attorney	To join p firm when was appoin for Court Governor.
August 1977-January, 1979	Staff Attorney, Legal Aid Society of Northwest North Carolina, Inc. 216 West Fourth Street Winston-Salem, North Carolina 27101 (F. Thomas Craven, Director)	Attorney	To join M Associate became Cu County Co
December, 1976-August, 1977	Associate of Atty. Arthur L. Lane 273 Gillespie Street Post Office Box 675 Fayetteville, North Carolina 28302	Attorney	To become with L.A.
May 27, 1974-December, 1976	Unemployed— Law School Attendance		
May 27, 1970-May 26, 1974 June, 1972-May, 1974	U.S. Army, Lieutenant, Field Artillery 74th U.S. Army Artillery Detachment APO New York, 09178 (Schwabstadl, West Germany)		Left Army law school
May-June, 1972	Field Artillery School Ft. Sill, Oklahoma 73503		
October, 1971-April, 1972	82d Airborne Division, Division HQ's Co.		
January, 1971-October, 1971	Battery "C", 2d/321st F.A. Div. Artillery Ft. Bragg, North Carolina 28307		
May, 1970-January, 1971 October, 1970-January, 1971	U.S. Army School: Field Artillery Officer Basic Course 7-71 Ft. Sill, OK 73503		
1970-September, 1970	3d Ranger Company, School Bde. Ft. Benning, Georgia 31905		
May-June, 1970	Airborne School, Class 43, School Bde. Ft. Benning, Georgia 31905		

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EMPLOYMENT (PAGE 2)

August, 1966-May, 1970	Unemployed (except summer employment) While undergraduate at Johns Hopkins University		
June-August, 1969	ROTC Summer Camp Indiantown Gap Military Reservation, Pennsylvania		
May-August, 1968	Baird Seating Company West Baltimore Street (?) Baltimore, MD Mr. Baird, Supervisor	Laborer Furniture delivery and installation	Su
June-August, 1966	PX gas station Mallonee Village Shopping Ctr. Ft. Bragg, North Carolina Mr. Barefoot, Supervisor	Gas Jockey	Su
1961-1963	Fayetteville Observer Fayetteville, North Carolina	Paper Route Carrier	

1985 update:

July 1984 - present	Methodist College 5400 Ramsey Street Fayetteville, N. C. 28301	Administrator Teacher

Paul B. Eaglin

Political Activities (page three)

1980 - In the 1980 general election, at the local level there was a phone bank organized for presidential candidate, Ronald Reagan, and senatorial candidate, John East. I made phone calls to voters urging them to vote for Reagan for President and East for U. S. Senate. Each volunteer contributed as time permitted. As I recall, I was able to contribute at least one full evening weekly but, by the end of the campaign, I believe I was doing more than that, perhaps on two-three evenings for short periods of time as well as the usual full evening.

In addition to the calls, I might also have attended a gathering such as a reception or speech by candidate East in this area, although I cannot recall specifically having done so.

For N. C. House of Representatives, candidate Terry Hutchens' campaign was supported financially, as reflected in the attached photocopies of checks.

1981 - In the 1981 Fayetteville City Council elections, I contributed to candidates as reflected on the attached copies

I was an alternate delegate from Cumberland County to the 1981 N. C. Republican convention in Wilmington, N. C.

1982 - In 1982, I made financial contributions to several candidates as reflected in the attachments.

The greatest political effort on my part in 1982 was on my own behalf as Republican candidate for one of five district court judge positions in the Twelfth Judicial District (Cumberland and Hoke Counties). I filed in January, 1982. Later, in the Spring of the year, I retained a public relations firm to plan and carry out the media presentations. The monies expended for filing and for the firm is reflected in the copies of checks attached. By August, 1982, my activity increased substantially, involving door-to-door campaigning, small group meetings, neighborhood coffees, meet-the-candidates forums, interviews, posting of signs, coordinating volunteer efforts, and seeking support of various groups district-wide.

In addition to my own campaign activities, on several occasions I participated with other Republican candidates in party rallies and fund-raising dinners in the county.

1983- In 1983, I made financial contributions as reflected in the attachments.

I attended candidates' receptions, dinners, BBQs, and such, the usual political events.

1984- I made financial contributions, as reflected in the attached photocopies.

In addition to contributing to the campaign of Jim Martin for Governor, I worked in his campaign at the county headquarters, doing such things as envelope-stuffing, mailings, introduction of him at a local campaign stop.

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202)

April 26, 1985

The Honorable Orrin G. Hatch
Chairman
Senate Committee on Labor and
   Human Resources
SD 428, United States Senate
Washington, D.C.   20510

Dear Senator Hatch:

Enclosed are my responses to the questions submitted by Committee Members as a follow-up to the Committee's Confirmation Hearing on April 24, 1985.

Sincerely,

Paul B. Eaglin

Paul Eaglin
Member, Board of Directors

Enclosure

Questions from Senator Simon for Paul Eaglin

1. ADEQUATE FUNDING -- WILL YOU SUPPORT ADEQUATE APPROPRIATIONS FOR THE CORPORATION, IN AN AMOUNT SUFFICIENT TO PROVIDE THE SAME LEVEL OF SERVICE TO ALL ELIGIBLE PERSONS, ACCORDING TO THE 1980 CENSUS?

   Yes.

2. ROLE OF THE PRIVATE BAR -- WILL YOU RESIST EFFORTS TO SUPPLANT LEGAL SERVICES ATTORNEYS WITH REPRESENTATION FROM THE PRIVATE BAR, UNLESS YOU ARE ABSOLUTELY ASSURED THAT THE QUALITY OF LEGAL SERVICES AND THE COMMITMENT TO LEGAL AID FOR THE POOR WILL NOT BE DIMINISHED?

   Yes.

3. AREAS OF LEGAL SERVICES ATTORNEYS PRACTICE -- WILL YOU WORK TO ASSURE THE CONTINUED EMPHASIS OF LEGAL SERVICES ATTORNEYS IN THE FOLLOWING PRINCIPAL AREAS OF PRACTICE: FAMILY LAW, HOUSING, INCOME MAINTENANCE AND CONSUMER CREDIT?

   Yes.

Questions from Senators Kennedy, Dodd, and Kerry for Paul Eaglin

Funding

1. DO YOU SUPPORT CONTINUED FEDERAL FUNDING OF LEGAL SERVICES?

   Yes.

2. WHAT LEVEL OF FEDERAL FUNDING DO YOU THINK IS NECESSARY TO MAINTAIN CURRENT SERVICE LEVELS IN FY 1986? FY 1987? AND FY 1988?

   For FY 1986, I advocated unsuccessfully for $373 million as a commitment to Congressionally mandated "minimum access." For FY 1987 and 1988, I am still of a mind to pursue minimum access.

Philosophy

1. NOT WITHSTANDING ANY RESTRICTIONS CURRENTLY PLACED ON LEGAL SERVICES PROGRAMS, WHAT DO YOU PERSONALLY BELIEVE IS THE APPROPRIATE ROLE OF LEGAL SERVICES LAWYERS IN SERVING THEIR CLIENTS? IF YOU COULD START FROM THE BEGINNING AND FORM A NEW LEGAL SERVICES PROGRAM, WHAT WOULD YOU DO?

   As a former staff attorney, I feel that the type of general civil practice I rendered characterizes the appropriate role for legal services lawyers. To begin over would not lead me to depart from a program which utilizes staff attorneys, local and neighborhood offices as the cornerstone service provider.

1. DO YOU THINK THE NEW LSC PRESIDENT MUST HAVE A COMMITMENT TO THE POOR AND TO LEGAL SERVICES FOR THE POOR WHICH HAS BEEN DEMONSTRATED BY PREVIOUS INVOLVEMENT IN POVERTY PROGRAMS OR LEGAL SERVICES?

   Yes.

2. DO YOU THINK THE LSC PRESIDENT SHOULD HAVE EXPERIENCE IN AND KNOWLEDGE OF LEGAL SERVICES PROGRAMS FOR THE POOR?

   Yes.

3. HOW IMPORTANT TO YOU IS IT THAT THE NEW PRESIDENT BE CAPABLE OF GAINING THE CONFIDENCE OF THOSE WHO WORK IN THE FIELD OFFICES OF LSC PROGRAMS?

   Such capability is a paramount leadership characteristic which I seek.

   a. WHAT TRAITS DO YOU THINK AN APPLICANT MUST HAVE IN ORDER TO WIN THAT CONFIDENCE?

   - Prior LSC or other related legal aid experience
   - Background which points to continued commitment to the concept of and the goals of adequate legal service provision
   - Dynamic leadership ideals and goals appropriate to the role
   - Non-political in background, or in emphasis (once in office)
   - Inspirational
   - Committed to healing and bridging the gulf between the field and LSC headquarters, as well as effecting excellent relations with the Congress and the White House (and to do it so effectively as to transcend the difficulties that attend the changes in majority control of either institution).

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEE

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: MENDEZ (LAST) PEPE (FIRST) J. (OTHER)

Position to which nominated: BOARD OF DIRECTORS LEGAL SERVICES CORPORATION

Date of nomination:

Date of birth: 9/4/45 (DAY) (MONTH) (YEAR)

Place of birth: GUNNISON, COLORADO

Marital status: Married

Full name of spouse: Linda Broughton Mendez

Name and ages of children:

Education:	Institution	Dates attended	Degrees received	Dates of degrees
Undergraduate	University of Colorado	1963-1967	B.A.	1967
Law	University of Colorado	1967-1970	J.D.	197
Business	Western State College (Guadalajara, Mexico)	1967	n/a	
Spanish	Arizona State Univ.	1968	n/a	
French	Cap D'Ail (Private School)	1975	n/a	
Spanish	Madrid, Spain (Private School)	1975	n/a	

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary socie memberships, and any other special recognitions for outstanding service or achievemer

Served on Law School Legal Aid & Defender program tw
years, Board of Directors of the Program one year;
Lecturer, Continuing Legal Education Courses.

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Committee on Proposed New Rules of Procedures for
Worker's Compensation for State of Colorado (1983)

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

"Advertising & Labeling to Control Product Liability
Claims" July, 1977 Industrial Marketing Magazine
Several Letters to Editors

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

(See Exhibit "B")

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

NO

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

n/a

3. Has a commitment been made to you for employment after you leave Federal service?

NO

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

YES, I INTEND TO SERVE A FULL TERM

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

NONE

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

NONE

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

I testified with regard to the immigration policies in the United States, stating I believe an amnesty program with the strengthening of the Border Patrol, and increased economic development in Mexico would be appropriate.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I am aware of no potential conflict of interest.

EXHIBIT "A"-FEBRUARY 19, 1985

Organization	Dates
American Bar Association	Present
Colorado Bar Association	Present
Denver Bar Association	Present
Colorado Hispanic Bar Assoc. (1983-Secretary)	Present
Immigration Lawyers Association	1980-1981
National Association of Social Security Claimant's Representatives	Present
Colorado Trial Lawyers Association	Present
American Trial Lawyers Association	Present
Law Club (Denver)	Present
Colo. Assoc. of Commerce & Industry	Present
Denver Chamber of Commerce	Present
Latin Chamber of Commerce (Denver)	Present
Denver Zoo Associates	Present
Denver Rose Society	Present
Confrerie de la Chaine des Rotisseurs (Denver) (Vice Chancelier Argentier)	Present
Colorado Mountain Club	Present
American Rose Society	Present
Ports of Call Travel Club (Denver)	Present
Denver Art Museum	Present
Denver Museum of Natural History	Present
Denver Zoological Foundation	Present
Denver Botanic Gardens	Present
Big Brothers (Denver)	1971-1974 (Board of Directors)
Salvation Army (Denver Adult Rehab. Center)	Present (Board of Directors)
Justice Information Center (Denver)	Present (Board of Directors)
United Way (Allocation Committee)	1983

EXHIBIT "B" February 19, 1985

POLITICAL CONTRIBUTIONS

1984

Committee For:

Armstrong for Senate	$500.00
Klingsmith for Congress	$500.00
Mary Downs for Congress	$100.00
250 Club	$250.00
Lincoln Club	$ 58.00
Republican National Committee	$ 50.00
5M Club	$250.00
Ken Kramer for Congress	$200.00
Denver County Republican(Backwards Raffle)	$300.00
First Congressional Committee	$500.00
Victory '84	$1,000.00

1983

Committee For:

Ken Kramer for Congress	$100.00
250 Club	$250.00
Colorado Republicans	$139.23
Republican National Committee	$ 50.00
Republican Hispanic Assembly	$220.00
District One-Denver	$ 50.00
Dan Schaefer for Congress	$250.00
Republican Hispanic Assembly	$ 43.00
Republican Hispanic Assembly	$ 10.00

1982

Committee for:

Republican Hispanic Assembly	$ 20.00
Denver County Republicans	$130.00
Republican Hispanic Assembly	$ 65.00
William Shroeder	$ 50.00
Lincoln Club of Colorado	$ 6.50
Arch Decker for Congress	$250.00
Citizens for a New Beginning	$190.00
Citizens for a New Beginning	$100.00
Woodard for Attorney General	$ 50.00
5 M Club	$ 60.00
Winn for Governor	$250.00
Colorado Republicans	$ 50.00

1981

Committee For:

Republican National Committee	$ 50.00
Ken Kramer for Congress	$375.00
Lincoln Club of Colorado	$250.00
Denver County Republicans	$300.00
National Federation of Republican Women	$ 55.00
Elephant Club	$1,000.00
250 Club	$250.00
Republican National Committee	$ 50.00
Colorado Republicans	$100.00
5 M Club	$ 60.00

Exhibit "B" Continued
Page Two

1980
Committee For:

Presidential Inauguration	$420.00
Colorado Republicans	$372.00
Mike Shroyer	$ 50.00
Ruth Prendergast	$ 75.00
Colorado Republicans	$ 40.00
Greg Rogers for Colorado 15	$ 75.00
Naomi Bradford for Congress	$ 50.00
Colorado Republican Convention	$ 50.00
John Cogswell	$100.00
Colorado Republicans	$250.00
Republican Hispanic Assembly	$ 10.00
Colorado Republicans	$ 50.00

In addition Pepe J. Mendez, Professional Corporation has donated to the state and local parties and races, as has Linda Mendez.

POLITICAL AFFILIATIONS

Chairman: Reagan-Bush '84 for First Congressional-Denver County
Chairman: First Congressional District Committee-Colorado (1983-1984)
Co-Chairman: Hispanics for Reagan-Bush for Colorado (1980)
Chairman: Republican Hispanic Assembly of Colorado (1980 & 1981)
Executive Committee: National Republican Hispanic Assembly (1979 to Present)
Chairman: Denver Republican Rules Committee (1980)
Chairman: Republican Ballot Security for Colorado (1980)
President: Lincoln Club of Colorado (Oldest Republican Club in Colorado (1982); Board of Directors (1978-Present)
Secretary: Citizens for a New Beginning (1981-1984) Republican Club started by Reagan supporters
Member Steering Committees & Minority Advisor: Numerous Republican candidates
Precinct Committeeman: Colorado Republican Party (1982 to 1984)
Member: 250 Club; 5-M Club
Republican Party Sustaining Member
Active in numerous campaigns and Republican groups since 1972.

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202)

April 26, 1985

The Honorable Orrin G. Hatch
Chairman
Senate Committee on Labor and
Human Resources
SD 428, United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Enclosed are my responses to the questions submitted by Committee Members as a follow-up to the Committee's Confirmation Hearing on April 24, 1985.

Sincerely,

Pepe J. Mendez
Member, Board of Directors

Enclosure

QUESTIONS FOR ALL NOMINEES

RESPONSES BY MR. MENDEZ

FUNDING

1. DO YOU SUPPORT CONTINUED FEDERAL FUNDING OF LEGAL SERVICES?

A: YES.

2. WHAT LEVEL OF FEDERAL FUNDING DO YOU THINK IS NECESSARY TO MAINTAIN CURRENT SERVICE LEVELS IN FY 1986? FY 1987? and FY 1988?

A: Our study of the Budget found that $305 million would enable the Corporation to expand direct service to clients in FY 1986 by moving funds within the budget. We have not studied FY 1987 or FY 1988 yet. The appropriate funding levels in those years will depend upon a variety of factors including the condition of the national economy, the level of non-federal funds available and the response of the private bar to meet these needs.

PHILOSOPHY

1. NOT WITHSTANDING ANY RESTRICTIONS CURRENTLY PLACED ON LEGAL SERVICES PROGRAMS, WHAT DO YOU PERSONALLY BELIEVE IS THE APPROPRIATE ROLE OF LEGAL SERVICES LAWYERS IN SERVING THEIR CLIENTS? IF YOU COULD START FROM THE BEGINNING AND FORM A NEW LEGAL SERVICES PROGRAM, WHAT WOULD YOU DO?

A: A lawyer has the duty to represent his client in the best possible manner, provided the representation complies with the statutes, regulations, and Canons of Ethics.

In starting a new legal services program I would seek input from the organized bar, from the client community, from the local, state and national government, from the business community and from the minority community among others. I would place more reliance on the client and minority communities than have been in the past. Further, I would encourage a mix of staff attorney, pro bono, and judicare depending on the best manner of delivering legal services to the clients to meet specific needs.

QUESTIONS FOR ALL NOMINEES

RESPONSES BY MR. MENDEZ

1. DO YOU THINK THE NEW LSC PRESIDENT MUST HAVE A COMMITMENT TO THE POOR AND TO LEGAL SERVICES FOR THE POOR WHICH HAS BEEN DEMONSTRATED BY PREVIOUS INVOLVEMENT IN POVERTY PROGRAMS OR LEGAL SERVICES?

A: The new LSC president should be committed to the ideals of American justice for all our people as expressed in the Constitution and the Legal Services Corporation Act.

2. DO YOU THINK THE LSC PRESIDENT SHOULD HAVE EXPERIENCE IN AND KNOWLEDGE OF LEGAL SERVICES PROGRAMS FOR THE POOR?

A: Experience and knowledge of LSC programs will be helpful. However, experience in handling funds, managing individuals, and communications with Congress are equally important.

3. HOW IMPORTANT TO YOU IS IT THAT THE NEW PRESIDENT BE CAPABLE OF GAINING THE CONFIDENCE OF THOSE WHO WORK IN THE FIELD OFFICES OF LSC PROGRAMS?

A: The new president should gain the confidence of not only the staff of the legal services programs, but more importantly, the clients we serve.

   a. WHAT TRAITS DO YOU THINK AN APPLICANT MUST HAVE IN ORDER TO WIN THAT CONFIDENCE?

   A: Patience, honesty, perserverance, integrity, and loyalty to the American System of Justice.

QUESTIONS FOR ALL NOMINEES FROM SENATOR SIMON

RESPONSES BY MR. MENDEZ

1. ADEQUATE FUNDING -- WILL YOU SUPPORT ADEQUATE APPROPRIATIONS FOR THE CORPORATION, IN AN AMOUNT SUFFICIENT TO PROVIDE THE SAME LEVEL OF SERVICE TO ALL ELIGIBLE PERSONS, ACCORDING TO THE 1980 CENSUS?

A: YES. However, as we come closer to the 1990 Census it might be wise to see if we can determine where there has been an increase in poverty count and focus increased funds in those pockets.

2. ROLE OF THE PRIVATE BAR -- WILL YOU RESIST EFFORTS TO SUPLANT LEGAL SERVICES ATTORNEYS WITH REPRESENTATION FROM THE PRIVATE BAR, UNLESS YOU ARE ABSOLUTELY ASSURED THAT THE QUALITY OF LEGAL SERVICES AND THE COMMITMENT TO LEGAL AID FOR THE POOR WILL NOT BE DIMINISHED?

A: YES. Our clients deserve the best possible legal assistance available. If a staff attorney can do the best job I will support that; if better representation can be offered by a private attorney I will support that.

3. AREAS OF LEGAL SERVICES ATTORNEYS PRACTICE -- WILL YOU WORK TO ASSURE THE CONTINUED EMPHASIS OF LEGAL SERVICES ATTORNEYS IN THE FOLLOWING PRINCIPAL AREAS OF PRACTICE: FAMILY LAW, HOUSING, INCOME MAINTENANCE AND CONSUMER CREDIT?

A: YES.

QUESTIONS FOR MR. MENDEZ

RESPONSES BY MR. MENDEZ

1. DID THE LSC BOARD VOTE ON MARCH 8 TO DEFUND OR OTHERWISE ELIMINATE THE REGINALD HEBER SMITH FELLOWSHIP PROGRAM BEGINNING WITH FY 1986 FUNDS? IF NOT, PLEASE EXPLAIN WHAT IT DID DO ON MARCH 8?

A: YES.

2. ON DECEMBER 20, 1984 THE LSC BOARD VOTED TO RESTORE PART OF THE CUT IN THE REGGIE PROGRAM WHICH HAD BEEN TENTATIVELY VOTED ON DECEMBER 5. ON MARCH 8, THE BOARD VOTED TO REDUCE FUNDING FOR THE PROGRAM ALTOGETHER.

   a. WHAT INFORMATION DID YOU HAVE ON MARCH 8th THAT YOU DID NOT HAVE ON DECEMBER 20, 1984?

   A: Testimony of interested individuals and LSC staff. The attached letter from Terry Roche of the Project Advisory Group was read into the record. I studied the attached memorandum.

   b. WERE YOU PROVIDED ANY INTERNAL LSC DOCUMENTS WHICH WERE NOT MADE PUBLIC AND ON WHICH YOU RELIED? IF SO, DID THE SUPPORTERS OF THE REGGIE PROGRAM HAVE AN OPPORTUNITY TO REBUT ANY OF THE INFORMATION IN THE PRIVATE REPORT?

   A: See the attached. Yes, the Reggie program and Howard University was given an opportunity to respond to this report.

   c. DID YOU HEAR TESTIMONY FROM ANY PARTIES WHICH SUGGESTED THAT THE REGGIE PROGRAM BE DEFUNDED? IF SO, FROM WHOM? WHEN? WAS THIS PUBLIC TESTIMONY? DID THE SUPPORTERS OF THE REGGIE PROGRAM HAVE AN OPPORTUNITY TO CHALLENGE THE INFORMATION?

   A. No. Since it was a contract, no defunding procedure is necessary. We heard testimony that there were a lot of problems though and relied on that to terminate the program.

MENDEZ INSERT FOR:

PAGE 4 -- QUESTION 2

Reggie

LEGAL AID SOCIETY OF MECKLENBURG COUNTY
SIXTH FLOOR, PROFESSIONAL SERVICES CENTER
403 NORTH TRYON STREET TELEPHONE (704) 376-1606
CHARLOTTE, NORTH CAROLINA 28202

TERENCE ROCHE,
Executive Director

Attorneys
JEAN CARY
THEODORE FILLETTE
ROBERT GAGE
DONALD GILLESPIE
PHILIP LEHMAN
THOMAS WYCHE

Paralegals
BERTHA C. CRAWFORD
ARTHUR GRIFFIN
DOLORES M. HART
RANDY MILLER

November 30, 1976

Mr. Clinton Bamberger
Vice President
Legal Services Corporation
733 Fifteenth Street, N.W.
Washington, D. C. 20005

Dear Clint:

During the Board meeting at Alta, Utah we chatted about the Reggie program, and I promised you that I would send you my thoughts in writing for whatever purposes they might serve. I hope that my long delay in doing so has not rendered them now irrelevant. In any event, here they are.

I feel that the Reggie program's objectives as I perceive them can be achieved in a manner less costly to local legal services projects and at a lower national administrative cost. Therefore I urge the Corporation to discontinue the Reggie grant after fiscal 1977.

Unlike many project directors with whom I have discussed the Reggie problem, I cannot seriously complain about the program's administration or the capabilities of the individual Reggies sent to Charlotte. Indeed, we have had excellent cooperation with Glenn Carr, Herb St.Clair and others, who often have been able to provide us with the exact people we would have recruited ourselves. Rather, my objection is to the use of the Reggie grant and contract to achieve barely articulated purposes which now largely seem irrelevant. Although, I never have read or heard any precise goals for the Reggie program, I, have perceived them over the years to be variously:

1. To recruit and specially train a cadre of "poverty" lawyers who could develop issues of particular impact;

2. To recruit nationally for local programs;

3. To provide a significant opportunity for minority

lawyers and law graduates to work in legal services programs;

4. To provide through Legal Services training and experience a means of increasing the number of minority lawyers in local communities.

If there are other goals, I am not aware of them. And each of these goals, except perhaps the fourth can be achieved by other, less costly means.

The need for recruiting law graduates who then could be specially trained as "poverty" lawyers (the original purpose of the Reggie program, as I recall) no longer exists. And the program itself seems to recognize that. The current initial Reggie conferences now are virtually useless both from the viewpoints of the Reggies themselves and the local programs. Little if any specialized training occurs at them. Our most recent Reggies reported that the 1976 conference served no greater purpose than a n ice vacation in Washington after finishing the North Carolina Bar Exam. Clearly, that conference itself is a waste of Legal Services money, better used either in delivery or in substantive training.

The reason, of course, for the irrelevance of this first goal is the growth of clinical programs in law schools. Most such programs have at least some connections with a poverty law office. Moreover, few, if any, law schools lack at least a basic course in poverty law.

Further, the notion that recent law graduates can be used exclusively in "impact" matters as opposed to "case load" matters, as stated in the Reggie contract, is ridiculous. They have neither the litigation skills nor the knowledge of the target community possessed by the veteran staff attorneys (or even paralegals.) Since impact issues, whether dealt with through litigation, legislation or community education, develop from careful, experienced attention to individual client's problems, Reggies obviously must deal with "caseload" in order to be able to ever have any impact. The notion seems to be a throwback to Legal Services' early days (which you remember well) when few local projects operated in any manner other than the historical "Legal Aid" one. I think we are well past that point now, rendering Reggie's initial goal irrelevant and, to the extent the Reggie contract is actually honored, potentially harmful.

The national recruiting goal is, perhaps, somewhat needed now. But even this is marginal. You may recall the dialogue that Murray Schwartz and I had on the last evening of the Alta conference about the level of interest in Legal Services work. He felt it had diminished. I demurred. Current evidence in Charlotte dramatically supports my view. To date we have received more than seventy applications for four possible new attorney slots. They continue to arrive at the rate of about ten each week, and Rutgers tells me that they are about to send us a couple of dozen more. None of these applicants yet is from a North Carolina law school. Our sole recruiting effort has been letters to placement offices and Black Law Students' Associations at about a dozen Eastern and Southeastern law schools. The response from the Boston area alone has been so significant that we will soon send an interviewing team there. And the quality of most of these applications is such that we probably could fill our openings three times over with people whose potential is greater than that of any of our current staff.

I describe all this simply to point out that interest among exciting law students seems so high that a minimal shaking of the tree seems to be able to produce a bumper crop. It would be nice to be able to avoid the cost of sending staff to Boston, but on balance I think we are more comfortable making evaluations and choices ourselves. Consequently, where we, ourselves, can interview a large number of applicants with minimum cost and effort, we would prefer this method to some sort of national clearinghouse.

The national clearinghouse concept, however, is not a bad idea as an alternative system. And it could be done less expensively than Reggie now does it simply by having one or more local offices in each state interview at local law schools all candidates interested in working in legal services anywhere in the U. S. Resulting resumes and evaluations then could be pooled at the Corporation's regional and national levels from which local programs again, in turn, could seek names. Reggie's wasteful travel budget then could be avoided.

The goal of minority recruitment could be achieved similarly through a clearinghouse procedure. The effort to increase employment of minority attorneys is, of course, extremely important. But the Reggie program is not the best way to do it. Indeed, the Reggie program, itself, provides a disincentive to local programs to hire minorities. With Reggie guaranteed to send a program one or more minority law graduates each year, a project need not, itself, take real affirmative action to recruit for "in house" positions if any occur.

Instead, the Corporation should and must make affirmative action a high and serious priority in its annual review of grant applications. The two year duration of Reggie contracts is barely enough time to train and develop a real and valuable lawyer. Consequently the Reggie "opportunity" for minorities is somewhat of a sham. During his or her second year the Reggie's job security is virtually nil, and his or her employability outside Legal Services has not increased significantly from its level upon graduation from law school. The Corporation, therefore, if it sincerely believes in supporting increased opportunity for minority law graduates, should structure its grant system to award programs which effectively recruit and retain minority lawyers. Perhaps investment income could be used to increase a program's annual grant by one attorney for each two or three minority lawyers on the staff. (or some such similar incentive scheme.) The insecure annual Reggie contract, however, is not a particularly useful means of achieving this goal.

Reggie is most useful in realizing the fourth goal I have listed. Unfortunately I have never known anyone but me to consider it a true goal of the program. I think that it is a legitimate purpose, but I am not sure it fits among those set forth by Congress in the Act. Assume, however, that Reggie is intended to provide a means for minority law graduates to obtain a secure income, some training and a year or so of experience prior to going into private practice. If so, then Reggies should be immediately replaceable upon their termination rather than in the following August (if ever.) Small projects like ours (and, perhaps, even large urban projects) can ill afford the cost of training and supporting (with personnel, space and equipment) Reggies for as short a period as two years much less for shorter periods interspersed with periods when there is not even a body present to do legal research or some similar basic task. It is unfair to ask local projects to be a basic training camp without at least providing a continuing pool of trainees to handle the necessary basic work.

Ultimately, then, the Reggie program as presently structured is unnecessary or fails to achieve its possible objectives. Moreover, its cost to local programs is significant. Certainly, having Reggies is better than having no one. And Charlotte's Reggies have been generally so excellent that their contributions have exceeded ordinary expectations. Nevertheless, even the most capable law graduates do not begin to produce really significant work until they have been with an office about eighteen months. Consequently every year we face the loss of an attorney in the second year of a Reggie contract who has just begun to be valuable. In a large program with predictable turnover, this is perhaps not a large problem. But in ours, which is more typical, it is. The longevity average of our six staff attorneys (including one who started last week) is 3.7 years. We have very little turnover. Fortunately, we have been able to expand a little each year and to offer staff positions to Reggies who wanted them. But that cannot last forever.

Reggies, of course, also create overhead and personnel support costs. These can be happily incurred as long as there is a Reggie to support. But when a Reggie terminates and is not replaced or when (to a lesser extent) he or she is not a member of the Bar, the costs remain while the benefit disappears. And, finally, there is the training and supervision cost. Its effectiveness is low enough when the Reggie is around for only two years, and it virtually disappears if his or her duration is shorter.

The Reggie program, I conclude, must be terminated immediately. I think the Corporation erred badly in permitting yet another Reggie class to be recruited. The Corporation in August 1977 should simply cash-out to local programs the value of all Reggies in place (valuing each Reggie at the last used second year salary level plus 10% fringe) and should use the resulting savings in the total Reggie program, including its national administrative costs, to increase the money available for equalization. I fervently urge that you do so.

I hope this "field comment" helps in whatever evaluation you are making of the Reggie program.

Sincerely,

Terry Roche

Terry Roche
Director

cc: Dick Carter, Office of Program Support
Hulett Askew, Region VI
Denny Ray, P.A.G.

CONFIDENTIAL

M E M O R A N D U M

DATE: February 14, 1985

TO: Pepe J. Mendez, Esq.
Board of Directors

FROM: Victor M. Fortuno, Acting Director VMF
Office of Compliance and Review

SUBJ.: Reginald Heber Smith Community Lawyer Fellowship Program (Reggie)

As per the request conveyed to me by Dennis Daugherty, attached please find a copy of my October 12, 1984, memorandum to Gene Potack regarding the preliminary findings of the Reggie monitoring team.

If I can be of any further assistance, please let me know.

Best regards.

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Donald P. Bogard
President

Writer's Direct Telephone
(202)

MEMORANDUM

TO: Gene M. Potack, Director
Office of Field Services

FROM: Reggie Monitoring Team

RE: Monitoring of the Reginald Heber Smith Community Lawyer Fellowship Program (RHS)

DATE: October 12, 1984

I. INTRODUCTION

The monitoring team's study of RHS has disclosed some disconcerting items. The team first visited RHS for the three-day period from June 27, 1984 through June 29, 1984. We thereafter came into possession of documents and other information that made it necessary to more closely study the program.[1] The following is a summary of salient issues that have arisen during the course of our monitoring of RHS. It is not and should not be considered a final report with conclusive findings — it is intended solely as a summary update of our work in the areas that we have found most troubling.

II. POLITICAL ACTIVITY BY RHS' EXECUTIVE DIRECTOR

A. Factual Background

The monitoring team has come into possession of photostatic copies of certain troubling letters which John W. Davis, RHS's Executive Director, concedes are authentic. All three letters are on RHS letterhead and were signed by John W. Davis, and on each of the three letters Davis identifies himself as RHS' Executive Director.

Two of the letters are thank you letters "[o]n behalf of Wellington Webb, candidate for the Mayor of Denver ...", and both are dated May 10, 1983. The third letter is to "Friends of Peterson Zah" and was evidently accompanied by a $100.00 check. The letter closes with the sentence, "Please let [me] know what I can do here in Washington to help my friend's candidacy." The three letters are appended hereto as Attachments 1, 2 and 3 respectively.

In addition, a former RHS staff member has told the team that Mr. Davis solicited a financial contribution from her for the campaign of Wellington Webb, the aforementioned candidate in the Denver mayoral race. This former staff member further informed us that prior to this she did not know who Mr. Webb was, and that other members of the RHS staff also made financial contributions to Mr. Webb's campaign. (She has offered to provide us with a photostatic copy of her cancelled check to Webb's campaign fund.)

B. Legal Analysis

The reader's attention is here referred to sections 1006(d)(3), 1006(e)(1), 1006(e)(2), and 1007(b)(4) of the LSC Act, Section 1502 of Title 5 of the U.S. Code (The Hatch Act), Section 1608.4(b) of Title 45 of the Code of Federal Regulations, paragraph A(2) of Section XVIII of the LSC-Howard master contract for 1979-82, extended by amendment through July 31, 1984, and sections 501(a) and 501(c)(3) of the Internal Revenue Code of 1954. The following is a discussion of a few of these.

1) General Prohibitions Against Political Activity

Section 1007(b)(4) of the LSC Act provides as follows:

> No funds made available by the Corporation under [the LSC Act], either by grant or contract, may be used ... for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;

and, in pertinent part, section 1007(a)(6) prohibits "any political activity."

Section 1608.4(b) of Title 45 of the Code of Federal Regulations for Legal Services provides as follows:

> No employee shall use any Corporation funds for activities prohibited to attorneys under Section 1608.6 [which prohibits "any political activity"]; nor shall an employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities.

It appears, then, that the letters here in question may well have violated sections 1007(b)(4) of the LSC Act and 1608.4(b) of the Code of Federal Regulations for Legal Services.

2) Contractual Obligation to Comply with the Internal Revenue Code

The LSC-RHS master contract for 1979-82, extended through July 31, 1984 by amendment, obligated "Howard and the Law School ... to ... [c]omply with Sections 501(a) and 501(c)(3) of the Internal Revenue Code of 1954." LSC-Howard master contract, at paragraph A(2) of Section XVIII.

Section 501(c)(3) of the Internal Revenue Code of 1954 forbids a tax exempt organization from "...participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." 26 U.S.C. Section 501(c)(3). Case law on the subject indicates that any participation in the political campaign of any candidate for public office is sufficient to support a decision to revoke, retroactively, an organization's tax exempt status under 26 U.S.C. Section 501(c)(3).

Consequently, it appears that the letters in question may well constitute violations of the aforementioned contractual obligation and section 501(c)(3) of the Internal Revenue Code of 1954.

III. OUTSIDE PRACTICE OF LAW BY RHS' EXECUTIVE DIRECTOR

A. General Findings

During the course of its study of the Reggie program, the monitoring team learned that the program's Executive Director has been engaged in the outside practice of law during his tenure with the program. The first such instance to come to the team's attention was Mr. Davis' role as co-counsel for the plaintiff in the case of Charlene Pope v. Local 400, United Food and Commercial Workers Union, U.S. Dist. Ct. for the District of Columbia, Civil Action #81-1349, wherein Mr. Davis has requested $146,961.00 for his services as of January 19, 1984, and an additional $27,945.00 for services performed between January 19 and April 2, 1984. It should be noted that these amounts are only for the time put in by Mr. Davis. The total amount requested thus far in counsel fees, costs and expenses exceeds $360,000. See Attachments 4A and 4B. The monitoring team has been unable to determine whether Mr. Davis has requested (or intends to request) any additional sums for services more recently performed.

Upon learning of and confirming this one instance of outside practice by Mr. Davis, the team attempted to ascertain whether Mr. Davis has been handling other such cases. On July 23, 1984, Victor Fortuno, (the monitoring team's captain) made an in-person request of Mr. Davis for a complete list of all "outside" cases handled by him during his tenure with the Reggie program. Mr. Davis replied that he would put the list together and send it to Mr. Fortuno. On August 2nd, having heard nothing more from Mr. Davis, Mr. Fortuno wrote and had hand-delivered (that same day) a letter to Mr. Davis pointing out that the list had not yet been received, and asking Mr. Davis to "please be so kind as to [also] identify the amount of compensation that you received (or have requested) for your services in each of these cases and for the services you performed for AMTRAK during your tenure with the Reggie program."

The requested information was not received so, on August 24th, Mr. Fortuno again wrote to Mr. Davis pointing out that nothing had been received and renewing his request for the information. Nevertheless, Mr. Davis still did not respond to Mr. Fortuno's request. However, at the end of August, Davis submitted to Dean Lawson a memorandum captioned, "Legal Cases Handled - 1980-1984." See Attachment 5.

On September 4th, Mr. Fortuno received a copy of this memorandum from Dean Lawson but felt it to be inadequate. Consequently, on October 1st, Mr. Fortuno again wrote to Mr. Davis, stating, in part, as follows:

> [Your] memo contains no mention of the amount of compensation that you received (or have requested) for your services in each case, nor does it identify the services that you provided to AMTRAK or the payment received for that work. Again, please furnish me with this information. Also, you say in your memo of August 29th that some of the cases have been referred out to another attorney. Would you please advise us as to the identity of this other attorney, which cases were referred out to him/her and when (actual date and stage of proceedings) they were referred out. I ask that you provide me with all of this information by October 9, 1984

As of the writing of this memorandum, Mr. Davis has still not responded to Mr. Fortuno.

In any event, it appears that Mr. Davis has handled at least nine other cases and has rendered professional services to AMTRAK, for which services he was paid at least $29,805 in compensation. (See October 1, 1984 letter from AMTRAK, which is appended hereto as Attachment 6)

This "outside practice" activity by Mr. Davis should be of interest to both Howard University and the Legal Services Corporation. Since Mr. Davis is no longer teaching at Howard but, instead, functioning as an administrator, it may be that this outside practice violates the University's own policy prohibiting such activity without the express authorization of its President. LSC must consider this activity because it may possibly relate to several of the Corporation's statutory responsibilities, see e.g., ~~see~~ 42 U.S.C. Section 2996f(a)(3) and (4). See also, 45 C.F.R. 1604.

B. Subsidizing of Private Law Practice

However, aside from the question of whether Mr. Davis is authorized to engage in the outside practice of law, the monitoring team is alarmed by what appears to be the subsidization of an outside practice with RHS funds.

Mr. Davis' former Executive Secretary and his former Special Assistant have both informed members of the monitoring team that Mr. Davis operated his private legal practice from the RHS offices, using RHS staff, supplies and equipment to do so. For example, we were informed that Mr. Davis' private practice correspondence was routinely typed by RHS staff, during RHS time, on the RHS premises, with the RHS equipment, on RHS letterhead and copied on the RHS photocopying machine, with RHS paper stock and mailed out through the RHS postage machine. We were further informed by a number of former RHS employees that Davis' pleadings were also typed and reproduced by RHS staff during RHS time. Lastly, we were told that when a staff member had to stay on past regular business hours to continue working on Mr. Davis' private practice, he/she was given RHS compensatory time for that time.

When asked how he did the voluminous photocopying required by his practice, Mr. Davis conceded that he used the RHS photocopying machine and paper stock for this purpose, and that he did not repay RHS for these, or, so much as keep any record of the extent of such use.

Keith Edwards, RHS's Program Coordinator, is reported to have routinely assigned cases to research assistants for them to work on during regular business hours. In a telephone interview with Ms. Batie, Mr. Edwards stated that neither he nor Mr. Davis have ever engaged in such activity. However, one former research assistant contradicts his claim, as do documents obtained from Antioch Law School regarding student interns assigned to the program. See Memoranda of Understanding for Kearns and Gadson, appended hereto as Attachments 7A & 7B.

Kearns was, and Gadson is an Antioch law student. The Reggie program and the Antioch School of Law entered into a Memorandum of Understanding regarding the assignment of Kearns to the program as a legal intern. Specifically, the agreement ~~is~~ between Antioch and "John Davis -- Smith Fellowship Program." The agreement was endorsed by Mr. Davis on June 27, 1983 as the supervising attorney. The agreement identifies Kearns' duties as, "Legal research regarding federal court litigation; writing briefs, motions, memoranda, routine pleadings." No reference is made to assignments which might be considered program-related. Kearns was to work 40 hours per week for a fourteen-week period.

Gadson's internship commenced on May 21, 1984, and terminated on August 31, 1984. According to her Memorandum of Understanding, Keith Edwards was her supervising attorney. Her responsibilities were described as: "Branch v. YMCA, Research & Maintenance and other administrative duties." This document was endorsed by John Davis "for E. K. Edwards" on May 11, 1984.

Both Kearns and Gadson became paid wage employees of the program. Hence, it appears that they may have been further compensated with program funds for their case work.

According to Antioch officials, compensation of interns is prohibited by the ABA, by whom they are accredited. Also, Antioch appears not to have been aware that the students had been placed on the program's payroll.

Mr. Davis is reported to have received clients at the RHS offices on a regular basis and, in most instances, during regular RHS business hours. Program staff answering the telephones were required to receive his clients' calls, route them to his former Executive Secretary, or take messages from them if necessary.

As more fully explained below, under section III(D), in the Pope case, supra, Mr. Davis submitted Abstracts of Hours in support of his request for attorneys' fees. The several Abstracts list hours worked on specific dates by RHS staff and consultants. The RHS time sheets for these staff members and the relevant consulting agreements, when compared to the aforementioned Abstracts of Hours, suggest that there is a great deal of overlapping.

For example, according to Mr. Davis' own Abstract of Hours, on October 10 & 11, 1983, he was in meetings and conferences in connection with the Pope case for 12.5 and 8 hours, respectively. The Abstract also indicates that from October 12th through October 19th, Mr. Davis was in court each weekday for at least seven (7) hours a day trying the Pope case. For this time period, Mr. Davis did not report any time off from RHS. In fact, RHS' Time and Attendance and Leave Used reports do not show him as taking any time off during this period, and he received $1,467.52 in salary from RHS for this time.

Another example is that of Prather Randle, Davis' co-counsel in the Pope case. Between December 1982 and January 1984, Mr. Randle was contracted to provide services to RHS on at least eight occasions. For his services, Mr. Randle was paid approximately $9,495 with LSC funds.

Mr. Randle also submitted an Abstract of Hours to the Court in support of his request for over $162,000 in attorney's fees for services which he rendered in connection with the Pope case.

The monitoring team has reviewed all statements of consultants services and compared the dates of services to the Abstract of Hours of Prather Randle which was filed with the Court. It was discovered that during October and December 1983 and also January 1984, Mr. Randle was under contract with RHS at the rate of $150 per day to provide various services. However, on eleven days during those periods, Mr. Randle certified to the court that, for at least seven (7) hours and as much as eleven and one half (11.5) hours, he was either in trial, in conference or researching matters relevant to the Pope case. At least $1,650 of costs incurred on Mr. Randle's contracts appear to be questionable.

C. AMTRAK

The team was also told that Mr. Davis had an ongoing business relationship with AMTRAK, that his services were rendered to this organisation during regular business hours, that he had both an office and a secretary provided by AMTRAK for his use, and that he normally did not take leave of any type from the program during his absences, thus receiving compensation from both the program and AMTRAK. Davis' former Executive Secretary stated that she was instructed by Mr. Davis to sign his time records for a full day whether or not he was in the office.

According to AMTRAK, they have had Mr. Davis under contract since 1981. He has rendered services in connection with the case of Crump, et al. v. AMTRAK, Civil Action No. 79-1506 (D.D.C.). AMTRAK has also informed us of the following:

> The services rendered under the agreement included the investigation and conciliation of claims, preparation of unresolved cases for presentation to the Special Master, investigation and resolution of complaints about non-compliance with the terms of the Consent Decree.

> Mr. Davis had a great deal of flexibility in scheduling the performance of services required by the Consent Decree. Meetings and interviews with employees and management occurred during ~~regular~~ office hours, but we lack personal knowledge of how many or when. Most of the investigation aspects involved reviewing file documents and reports, which could have been done at any time.

See Attachment 6.

According to AMTRAK's records, Mr. Davis was in attendance at its headquarters at least sixty-four (64) days during regular business hours during the period from June 1, 1981 through November 18, 1982. However, a review of Mr. Davis' RHS time records (bearing Davis' own signature) discloses that he was reported to be on RHS time from 9:00 a.m. to 5:30 p.m. on each of these days. Thus, Mr. Davis was evidently compensated by RHS even though he was actually spending all (or at least part) of this time performing work unrelated to the program. As mentioned above, Mr. Davis has received at least $29,805 in compensation from AMTRAK.

D. The Pope Case

In one instance, that of the Pope case, supra, the monitoring team has obtained a fairly complete set of the voluminous pleadings in the case. We found that Mr. Davis and his co-counsel, Prather Randle, filed a Motion for Counsel Fees, Costs and Expenses. In support thereof, they filed a Memorandum of Law and appended to the memorandum "Abstract[s] of Hours" for each attorney, research assistant and paralegal who worked with or otherwise assisted Messrs. Davis and Randle on the plaintiffs' side of the case. We have compared the RHS internal time records and these Abstracts of Hours for three former research assistants, James Kearns, Sharon Bilbrew and Amelia Headley. We found that there was a considerable amount of overlapping — that is, the same dates were often claimed on both the individual's Pope abstract and RHS time records. A review of RHS time records, the appointment calendar maintained for Davis by his former Executive Secretary and the Abstracts of Hours strongly suggest that activities such as status conferences, depositions and trials routinely took place during RHS time.

For example, the team has learned that on one occasion the Executive Director held a deposition on the program's premises, utilizing the aid of RHS staff to do so. A Notice of Deposition identifying the location as "the office of plaintiff's counsel, 2900 Van Ness Street, N.W. - 4th Floor" (the RHS offices) was found in the court records for the Pope case. In addition, in her Abstract of Hours, Amelia Headley advised the court of her participation (10 hours) in another Pope deposition, but a review of her RHS time-records reveals that she claimed compensation from the program for the same day's work.

IV. UTILIZATION OF CONSULTANTS

The Executive Director is alleged to have contracted an attorney, Prather Randle, and compensated him for services to the program that were not rendered. This compensation is alleged to have actually been payment for services rendered in connection with the Executive Director's outside practice of law.

It has been difficult for team members to determine if services as specified in Mr. Randle's several contracts were in fact rendered. Comparison of his payment vouchers and Abstracts of Time from the Pope case revealed that many of the dates claimed on one were also claimed on the other.

Interestingly, according to Mr. Davis' Abstract of Hours in the Pope case, he personally expended $1,800.00 for the temporary relocation expenses of Mr. Randle and his paralegal, Vera Dosey, during the ten-day trial of the case. During this ten-day period, Mr. Randle was under contract with the program and received approximately $1,800.00 in compensation.

When the apparent conflict between days paid for and days actually worked by Prather Randle was brought up with Mr. Davis, he explained it as follows: When RHS hires a consultant for a particular number of days and then, on the corresponding Statement of Consultant Services form, indicates that the consultant has worked particular days, the consultant has not necessarily worked those days. This is simply a device utilized by RHS to have the consultant paid whatever RHS feels the consultant's work is worth. It could well be that the actual time put in on the task contracted for is less than stated, but the total amount paid is what the task is actually worth to RHS.

Mr. Davis and the RHS Budget Officer, George Tate, appear to have made significant misrepresentations in connection with the consultant contracts of one Raymond Michel. Messrs. Davis and Tate are reported to have intentionally misrepresented the fact that these contracts were for the rental of air-conditioning units. In order to generate payment for leasing air-conditioning units for RHS, Davis and Tate misrepresented on the Statement of Consultant Services the description of services to be performed by Raymond Michel. This statement is required by the University before payment can be made to a consultant. Mr. Michel was paid $975 in August 1983 and $580 in August 1982 for supposedly "formulating and supervising subsequent implementation of management-related components to assist RHS staff in preparation of current (1982-83) and 83-84 program year tasks." See Attachments 8A & 8B. Payments to Mr. Michel were actually made for renting air-conditioners for RHS, and the misrepresentation of the services to be rendered in the consultant contract was made to circumvent the University's purchasing procedures.

Both Messrs. Davis and Tate have acknowledged their actions, but stated that they were taken at the direction of "someone in the [University's] Office of the Comptroller." However, Mr. Davis said that he did not know the identity of this individual and Mr. Tate stated that he could not recall who it was.

For obvious reasons, this instance raises serious doubts about the credibility of contractual relationships entered into by RHS.

V. ENDORSEMENT OF CONSULTANT PAYMENTS OVER TO RHS STAFF MEMBERS

During our review of consultant agreements and expenditures we came across several checks made payable to consultants and endorsed over to RHS staff members. Photostatic copies of the cancelled checks are appended hereto collectively as Attachment 9. Although we do not know that there was anything improper involved in any of these payments, we of course feel obliged to further pursue this matter to determine fully the facts surrounding the various transactions.

Two $1,500 checks and one $1,000 check made payable to Prather Randle, an off-and-on consultant to RHS and co-counsel with Davis on several of Davis' outside practice cases, were apparently endorsed over to Davis and, according to Davis, cashed at Davis' bank. A fourth check for $1,500 was never endorsed but was in fact paid and the cancelled check bears the same bank markings on its reverse side as do the other three checks.

In addition, two checks, one for $519.00 and the other for $531.00 payable to Ms. Marsha Payne were endorsed over to Dorothy A. Brown, RHS's Budget Assistant.

VI. SELECTED TRAVEL EXPENSES

The monitoring team has also been told that unnecessary and/or prolonged business trips were taken by Messrs. Davis and Tate and paid for with program funds.

A. Tate's Trip to Chicago

For example, Mr. Tate took a trip to Chicago June 1-5, 1983. The cost of the trip was $1,126. In requesting the cash travel advance for this trip from the University, Mr. Tate represented that he would be attending an RHS Advisory Board Orientation Planning Committee meeting at the LSC Chicago Regional Office from June 1-5, 1983.

The monitoring team contacted the Corporation's Chicago Regional Office to check on whether such a meeting did take place and learned that there was no such meeting. There was only a two-hour meeting, which was held from 9:30 a.m. to 11:30 a.m. on June 2nd, and which had nothing to do with any "RHS Advisory Board Orientation Planning Committee" -- it was simply to meet with a Reggie from Prairie State Legal Services and that program's Executive Director to resolve a dispute they were having.

When Mr. Tate was asked to explain this discrepancy, he indicated that the purpose which he had stated on his request for a travel advance was "a mistake." Mr. Tate was then asked to explain the purpose of staying in Chicago for the remaining days (i.e., June 3-5, 1983). Indicated below are the reasons Mr. Tate gave us at different times for extending his stay in Chicago.

- Mr. Tate said that he made attempts to contact Glenn Carr, RHS former Executive Director and, at the time in question, an Assistant State Attorney in Illinois, to obtain his opinion on orientation and to discuss Private Bar Involvement. Mr. Tate then stated, however, that contact with Mr. Carr was in fact not made during the trip;
- Mr. Tate stated that he had meetings with and took to lunch/dinner the Reggies of Legal Aid Foundation of Chicago. At the monitoring team's request, the Corporation's Chicago Regional Office contacted those Reggies, and the Reggies stated that they neither met nor dined with Mr. Tate; and,
- Mr. Tate stated that he attempted to meet some United Airlines employees to resolve problems with an air freight bill. Mr. Tate also indicated that he purchased meals and drinks for two United Airlines employees, a Mr. Hight and a Ms. Searcey, "while transacting business with United Airlines." Mr. Tate further stated that he spent two nights at Mr. Hight's home during his stay in Chicago and claimed that he had paid Mr. Hight $50.00 a night for the stay.

The monitoring team contacted United Airlines and learned the following. Mr. Hight and Ms. Searcey are husband and wife and are flight attendants for United Airlines. We were informed that as flight attendants, they would have no reason to be involved with a dispute—over a freight bill.

A review of RHS' financial records and United Airlines' check of their own records discloses that the only United Airlines freight bill close enough in time was a December 1982 bill for $220.17. It is difficult for the monitoring team to accept that a dispute over the amount of this freight bill would justify expenses as those incurred here.

The monitoring team questions the following costs incurred by Mr. Tate on this trip, including, but not limited to, the following:

June 1	Dinner for 3 persons	$ 63.37
June 1	Taxi Fare to Dulles International Airport	30.00
June 2	Dinner for 4 persons	86.28
	Lunch for 2 persons	36.00
June 3-5	Other costs (meals, cabs, tips, other gratuities, lodging at friends home, and other costs excluding airfare)	431.35
Total Costs		$647.00

B. Davis' Trip to Puerto Rico

Mr. Davis travelled to Puerto Rico with his wife in February of 1984 for six (6) days. The purpose of this visit was stated to be for interviewing Reggie applicants in Puerto Rico. However, the team has ascertained that the interviewing took no more than two days. It appears that Mr. and Mrs. Davis flew down to Puerto Rico on Saturday, February 18, that all of the interviewing was done during the following Tuesday and Wednesday and that they remained in Puerto Rico until Friday afternoon of that week. The monitoring team checked the RHS time records to see whether Mr. Davis had taken any time off but learned that Mr. Davis was dropped from the RHS time sheets by 1984. In any event, Mr. Davis' hotel and other travel expenses were paid by RHS for the full six-day period. (It should be noted, however, that the team has seen no evidence that any of Mrs. Davis' expenses were paid by RHS.)

Mr. Davis was asked about this matter and he stated that in addition to interviewing Reggie applicants on Tuesday and Wednesday he met with Reggies in the area. However, the monitoring team checked and found that at that time there were only four Reggies in Puerto Rico (and two in the U.S. Virgin Islands).

C. $3,000 Cash Advance to Tate

In August 1983, Mr. Tate received a $3,000 cash advance to facilitate payment of 83-84 National Orientation Program related travel costs for facilitators, fellows and RHS staff. Mr. Tate submitted a travel settlement report supposedly giving an accounting of the $3,000. Mr. Tate's report was merely a typed memo listing dates and the number of participants receiving per diems ranging from $7.50 to $30.00 each. The accounting is summarized as follows:

Per Diem 8/21-26/83	$2,730
Taxi Fares - 20th Anniversary March on Washington	180
Private Auto assisting participants to airports	62
Total Costs	$2,972

According to the Comptroller's Office at Howard University, any accounting of this nature should include a list of participants and their signatures certifying the receipt of cash. Nevertheless, the Comptroller's Office approved the travel settlement report. When Mr. Tate was asked about this transaction, he stated that he did not have a list of participants.

VII. REQUIRED LSC APPROVAL OF ALL RHS SUBCONTRACTS OR CONSULTING AGREEMENTS IN EXCESS OF $1,000

The recently expired LSC-Howard Master Contract required RHS to submit all subcontracts or consulting agreements in excess of $1,000 to LSC for prior approval. See paragraph A. of Section XIX of the Master Contract. However, despite this contractual obligation, it was not done.

When Messrs. Davis and Tate were asked why they consistently failed to comply with this contractual requirement, they stated that they did so because they believed that LSC would not timely approve such contracts.

Messrs. Davis' and Tate's attention was then directed to Paragraph F.1. of Section I. of the Master Contract, which provides in part as follows:

> ...if within 10 business days after a party receives a request for approval from another party, the party with the right to approve does not disapprove in whole or in part or does not request additional time to consider the request for approval, then the matter, act, or document shall be considered to have been approved.

Their response was that they were aware of this provision but that it was meaningless to them because the University (a party to the contract) would not honor it -- that the University insisted on an actual, express, written approval by LSC. However, the University made payment on such subcontracts or consulting agreements despite the absence of written approvals by LSC. For some examples of subcontracts and consulting agreements which required LSC approval but which evidently did not receive such approval, see those attached hereto collectively as Attachment 10.

VIII. CONCLUSION

As mentioned previously, this is not a final report of our review of RHS. It does not address many of the areas that will be considered in our final monitoring report, to which RHS' comments will, of course, be invited. Moreover, as should be clear from a perusal of this memorandum, many of the points discussed herein may require some additional work.

d. HOW CAN YOU EXPLAIN THIS PROCESS?

A: The Reggie program was initiated in the sixties, and carried into the seventies and eighties, as a means of recruiting minority lawyers nationwide and to encourage law students to take up poverty law. However, the past twenty years have brought tremendous growth in the numbers of qualified minority students graduating from law schools each year, legal clinics serving the poor are now part of most law school programs and strong ties have been built between our programs and law schools across the country. In addition, available positions are advertised nationwide through the LSC-funded Clearinghouse Review. It no longer makes sense to spend $5.2 million to recruit and place new lawyers for field programs. The Board granted this money directly to the field programs to hire their own attorneys. The Board stated that it will assist the field programs with an in-house job bank and minority recruiting assistance and will further study the best way to recruit minorities.

QUESTIONS FOR MR. MENDEZ

RESPONSES BY MR. MENDEZ

1. MR. MENDEZ, YOU TOLD THE HOUSE APPROPRIATIONS SUBCOMITTEE THAT YOU WANTED TO DEVOTE SIGNIFICANT LSC RESOURCES TO INCREASED STAFF AND AUDIT AND COMPLIANCE REVIEW--PERHAPS AUDITS AS FREQUENTLY AS EVERY SIXTY DAYS. WHY DO YOU BELIEVE SUCH MEASURES ARE NECESSARY?

A: When I appeared before the House Appropriations Subcommittee on March 13, 1985, I said that the Board is very concerned that our grant recipients are in compliance with the Legal Services Corporation Act and with appropriations riders which apply to the use of funds provided to our grantees. To assure compliance, "we want to make sure that we can get an audit done and a monitoring done from each one of our approximately 290 programs at least once every 18 months." As the Board of Directors, we are the fiduciaries of a $305-million Corporation. We are responsible to the Congress as to how those funds are spent once the appropriated dollars are passed on to our grantees and contractors. Both audit functions and monitoring are requirements of the statute mandated by the Congress to the Corporation. Those functions are necessary from a good business standpoint as well to assure that our clients are getting the best possible service for the funds allocated. We have an obligation to the poor, and to refuse to monitor, would be a terrible disservice to those clients, as well as a violation of the LSC Act. (See the attached hearing transcript, pages 77, and 85).*

2. HAVE YOU ANY INDICATION OF WIDESPREAD VIOLATIONS OF THE LSC ACT AND REGULATIONS? CAN YOU CITE ANY EXAMPLES? HAVE THESE MATTERS BEEN INVESTIGATED BY THE RESPONSIBLE STAFF?

A: For the past two years, Senator Orrin Hatch and his investigative staff have built a substantial record of widespread violations of the appropriation rider and the Legal Services Corporation Act. The hearing records from Senator Hatch's and Senator Denton's and Senator Grassley's oversight hearings in July 1983, and from April 1984 contain excellent examples of violations. During the last such hearing on April 11, 1984, the General Accounting Office said that illegal lobbying campaigns on a national scale on the part of LSC and its grantees represented the number one priority of LSC for the two years subject to their investigation (1980 & 1981). The GAO told the Committee that no less than four reports and opinions had been issued concerning such illegal grass roots campaigns, and that the Corporation had been remiss in not issuing regulatiuons to deal with the problem. In one state studies, the GAO found attorneys dropped as much as one-third of their client caseload to participate in illegal activities. I am attaching the hearings in 1983 and 1984 as well as the GAO report issued in September 1983.*

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*Due to printing limitations and in the interest of economy, the transcript referred to was retained in the files of the Committee where it may be researched upon request.

3. DID YOU RECEIVE A LETTER OF COMPLAINT FROM SENATOR JESSE HELMS?

A: YES.

4. DID YOU REPLY TO THAT LETTER? WHAT DID YOU SAY TO SENATOR HELMS? PLEASE PROVIDE ME WITH A COPY OF YOUR REPLY.

A: YES. See copy of my reply to Senator Helms is attached.

5. DID SENATOR HELMS' LETTER INFLUENCE YOU AS A BOARD MEMBER? HOW?

A: Any time that United States Senator makes his views known to me in writing, those views have considerable weight and influence. The opinion of the Chairman of the Agriculture Committee of the United States Senate on a matter over which his committee may have oversight cannot help but stimulate my careful analysis of LSC concerns.

6. DID YOU INVESTIGATE THE MERITS OF SENATOR HELMS' COMPLAINT?

A: I instructed the staff to follow-up on the letter with Senator Helms, as I did.

7. DIDN'T YOU CIRCULATE THE LETTER TO OTHER MEMBERS OF THE LSC BOARD? PRIOR TO DOING SO, DID YOU ATTEMPT TO DETERMINE WHETHER THE COMPLAINT HAD ANY MERIT?

A: I informally circulated Senator Helms letter to other Board members since his views concerned a matter pending before us. Had any other Senator written, his letter would have been circulated.

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*In the interest of economy, the material referred to was retained in the files of the Committee.

MENDEZ INSERT FOR:

PAGE 7 -- QUESTIONS 3&4

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

272-4040

March 12, 1985

The Honorable Jesse Helms
Chairman, Committee on Agriculture,
Nutrition and Forestry
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your February 14, 1985 letter expressing your interest in the Legal Services Corporation's FY'86 Budget Request. You were especially concerned with the level of funding for migrant farmworkers legal services programs.

The LSC Board of Directors met on March 7 and 8, 1985 to prepare our budget request to Congress. Prior to that meeting, the Board of Directors conducted an extensive review of every aspect of LSC's budget. Dozens of speakers were heard and thousands of pages read. Based upon the information we received, the Board adopted a budget of $305 million for FY'86. Our priority in preparing this budget was to ensure that direct service to clients be increased. Therefore, we have increased funding for basic field programs by 4.6 percent.

To fund this increase in direct client service it was necessary to reduce the budget in other areas. The Board decided to reduce migrant funding by 21.6 percent for two reasons. First, the migrant count used to determine the funding levels for migrant programs has vastly overstated the total number of migrant farmworkers in this country. Recent studies by the Census Bureau and the Department of Agriculture suggest that the migrant population is less than half or perhaps a third of the number estimated in the study which the Corporation has used to fund migrant programs. Second, migrant farmworkers are already counted in the census data used to fund our basic field programs, so they are double counted.

The Board is very concerned with the problems in the migrant program which you have reported. We will undertake a comprehensive review of the migrant program this year to determine what changes may be necessary. Should you wish to hold hearings on this subject, the Corporation will be happy to cooperate.

I trust this fully addresses your concerns. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Pepe J. Mendez

PJM:bmk

United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, D.C. 20510

February 14, 1985.

Mr. Pepe Mendez, Director
Legal Services Corporation
733 Fifteenth Street, N.W.
Washington, DC 20005

Dear Mr. Mendez:

It is my understanding that you are examining the subject of migrant worker legal services offered by various grantee legal services organizations with a view toward future funding for these organizations. Consequently, I want to report some facts about the activities of Farmworkers Legal Services of North Carolina, a Legal Services Corporation grantee organization, that have been related to me by several of my North Carolina constituents. Lastly, I want to share with you my views on funding in light of these activities.

My constituents advise that Farmworkers Legal Services of North Carolina (FWLS) files lawsuits alleging, in a non-specific manner, technical violations of the Migrant and Seasonal Agricultural Worker Protection Act. Consequently, neither the constituents nor their lawyers can determine what the factual basis for the alleged violation is. FWLS routinely seeks statutory damages of $500 per violation. No actual damages have been alleged or proven in the cases filed thusfar. The constituents believe that the migrant workers have suffered no actual damages and are being used by FWLS as a vehicle to inflict pain and suffering on the constituents.

Additionally, my constituents state that FWLS refuses to deal with them in good faith prior to filing suit. FWLS routinely contacts potential defendants approximately seven days prior to filing suit and asks them to settle on terms dictated by FWLS. FWLS refuses to disclose the identities of the complaining migrant workers and the factual basis for their complaints during these settlement discussions, nor will FWLS permit the constituents' lawyers to talk with the complaining migrant workers. Thus, the constituents' lawyers have no idea of the strengths or weaknesses of these cases and cannot know whether to recommend settlement to the constituents. FWLS makes a concerted effort to deny opposing counsel access to the migrant workers while these workers are residing in the community in which the alleged violations occurred.

My constituents also report that FWLS files reams of form interrogatories, requests for admissions, and requests for production of documents as part of their tactical strategy in these lawsuits. Excessive use of these discovery tools pressures the constituents to settle on terms dictated by FWLS. The constituents are worn down by these discovery tactics; it is less costly to settle than to pay a lawyer to respond to the interrogatories and requests for admissions and to see that all requested documents are produced.

My constituents have also related instances in which FWLS personnel were very rude and discourteous to them and their families. The constituents believe that FWLS is out to destroy both them and the migrant workers. The constituents state that the FWLS employees have a fanatical view of their mission which precludes these employees from acting reasonably or courteously.

I have also been advised by others involved in migrant labor affairs that the activities I have outlined are not unique to the State of North Carolina, but are in fact occurring in Texas and to a lesser extent in the States of Virginia and Maryland. Migrant legal aid programs, such as those operating in North Carolina, Texas, Virginia, and Maryland, were not established to become funding mechanisms for social impact litigation or social engineering. The agents employed in these programs must not harass our rural communities with impunity or be allowed to continue to avoid the consequences of their unreasonable actions.

The effective method of dealing with this sort of behavior is to cut off the Government funds upon which it feeds. I urge you and the other members of the Board of Directors to take this step without delay. Organizations such as Farmworkers Legal

Services of North Carolina should not be given a free hand to ruin both the farmers and those whom they purport to represent, i.e. the migrant workers.

Sincerely,

Jesse Helms

JESSE HELMS
Chairman

8. IS IT NOT A FACT THAT THE COMPLAINT HAD PREVIOUSLY BEEN INVESTIGATED AND REJECTED AS LACKING IN MERIT BY LSC ONLY LAST FALL?

A: ~~Yes.~~ An investigation was begun into an earlier complaint from Senator Helms and from a number of his constituents in North Carolina. It was stopped by the then-President of the Corporation and the president released a very narrow report. The investigation has now been reopened to examine broader allegations.

QUESTIONS FOR MR. MENDEZ

RESPONSES BY MR. MENDEZ

1. ARE YOU INTENDING TO ABOLISH REGIONAL OFFICES?

A: The Board took testimony from the field and recommendations of the staff. My intention at the present time is to follow the staff recommendation (Please see attached.)

2. IF THE DECISION HAS NOT BEEN MADE, HOW DO YOU EXPLAIN YOUR FY 1986 BUDGET SUBMISSION WHICH SEEKS FUNDS FOR ONLY 10 REGIONAL OFFICE EMPLOYEES IN DENVER?

A: I was a recess appointee of the President and requested the staff to prepare a proposed budget for submission because of the short time. We will then take testimony to deny the plan, or confirm, expand or reduce it.

3. WHEN ARE YOU PLANNING TO MAKE THE DECISION?

A: In May or June, 1985.

4. WHAT PROCESS WILL YOU USE TO HEAR FROM ALL CONCERNED PARTIES?

A: The reorganization of the Office of Field Services has been under consideration for two years. Comments from the Regional Office staff have been solicited. The plan was also discussed at a Regional Director's meeting on March 20, 1985 (see attached agenda) and substantially revised to respond to valid points made. Significantly, the plan was modified to shift from a single office in Denver to four enlarged offices around the country. The revised plan has been discussed with some individual Regional Directors who indicated their support. In addition, the plan has been provided to the National Organization of Legal Services Workers and regional personnel for their evaluation and comment. LSC Headquarters staff will meet with regional representatives to discuss the plan next week.

a. WILL EXISTING REGIONAL OFFICE STAFF BE GIVEN AN OPPORTUNITY TO PRESENT THEIR VIEWS TO THE BOARD?

A: They have been given the opportunity to testify or write.

MENDEZ INSERT FOR:

PAGE 9 -- QUESTION 1

OFFICE OF FIELD SERVICES REORGANIZATION PROPOSAL

It is the recommendation of the Office of Field Services (OFS) that its current operational configuration be reorganized.

The proposed OFS reorganization: (1) follows almost four years of corporation reorganizations initiated in 1981; (2) responds to Congressional demands for more timely and effective monitoring of the Corporation's recipients; (3) responds to OFS's need to eliminate, within its operational structure, inefficiency, unequal workload distribution, historical staffing inequities, duplication of effort and functions, unjustifiable overhead and top-heavy layers of management; (4) responds to the budgetary reality which requires OFS to reduce the division's operational costs to $4.1 million thereby enabling the Corporation to reduce its overall Management and Administration budget to the $10.7 million level set by its Board of Directors.

In accordance with items numbered (1) - (4) above (which will be treated more fully herein), the Office of Field Services recommends that its current operational structure be changed from its minimally staffed Monitoring and Evaluation Unit (M & EU - which is housed at headquarters) and its present nine (9) regional office (RO) configuration (see Attachments 1 and 1A) to a substantially enhanced central M & EU (which will contain 2 regional desks) and four (4) ROs.

The staffing in the central M & EU housed at OFS headquarters would be increased from an authorized strength of nine (9) and an actual strength of five (5), to a total of nineteen (19).

Of these nineteen (19), eight would be set up as two "Desks" of four professionals each in order to monitor recipients located in the Northeastern United States which are now monitored by the Boston, New York, Philadelphia and Northern Virginia (Minus Michigan and Ohio) Regional Offices.

Should the Board agree to consolidate OFS, most regional office responsibilities, including day-to-day liaison with recipient programs, would be transferred to OFS headquarters. In the consolidation phase of reorganization, these functions would be assigned to the Monitoring and Evaluation Unit, which would become the largest unit in OFS and would in effect replace the remaining activities of the regional offices. Each of the desks would have four (4) members, two (2) quantitative analysts and two (2) staff attorneys organized around "desks" to handle direct oversight of assigned grant recipients in the reorganized Northeast region.

These desks would be composed of four professional staff each with responsibility for approximately 50 programs. They would handle traditional functions such as pre-monitoring visit desk audits, review of financial statements and variance reports, and the organization of on-site evaluations.

One historical responsibility of the regional offices has been review of refunding applications. Refunding applications also received some review in headquarters, a duplication that would be eliminated under consolidation.

OFS is studying other ways of smoothing this review process, such as additional automation, incorporation of refunding application review into the pre-evaluation desk audit, and so on. This process is one in which we would anticipate achieving additional efficiencies under consolidation.

OFS has anticipated that some of the new headquarters positions may be filled by the former staff of regional offices. Where possible, these individuals may be assigned to the desks designated to the region of the country with which they are familiar to maintain maximum continuity during reorganization.

The fully staffed reorganized M & EU would then consist of a manager, an assistant manager, two (2) four person "Desks" (described above), four (4) RO liaison persons, an administrative assistant and four (4) support persons. The additional personnel would substantially enhance OFS's ability to centralize and more uniformly administer its overall monitoring and evaluation responsibility.

The four (4) proposed reorganized ROs (see Attachment 2 and 2A) would be maintained in Atlanta (the Southern RO, which would maintain its present geographic coverage), Chicago (the Mid-West RO, which would be expanded to include Michigan and Ohio), Denver (the Rocky Mountain RO, which would be expanded to include Montana and Wyoming and would continue to house the Native American Unit, and San Francisco (the Pacific RO, which would be expanded to include Oregon, Washington, Alaska, Hawaii, Micronesia, and Guam.)

The four reorganized ROs would then be fully staffed up and redirected towards monitoring as their primary function. Total staffing in the ROs would be twenty-nine (29). Staffing for these offices would be as follows:

PROPOSED STAFFING

	Professionals	Support
Southern	5	2
Mid-Western	5	2
Rocky Mountain	4	2
(Native American Unit)	2	1
Pacific	4	2
TOTALS	20	9

CURRENT STAFFING

	Professionals	Support
Atlanta	2	1
Chicago	4	1
Denver	3	-
(Native American Unit)	2	1
San Francisco	3.5	1
TOTALS (Permanent Employees)	14.5	4

Currently, there are thirty-two and one-half (32.5) permanent employees in OFS's nine ROs out of a total of fifty-nine (59) authorized positions. Seven (7) of these are located in the Northern Virginia RO which is now housed at headquarters.

The ROs which OFS proposes to close pursuant to this reorganization (i.e. Boston, New York, Philadelphia, Northern Virginia and Seattle) are currently staffed by fourteen (14) persons, seven (7) of whom are in the Northern Virginia R.O. and, presumably, would not face relocation. The staff breakdown is as follows:

CURRENT STAFFING

	Professionals	Support
Boston	Staffed by temporary personnel	
New York	3	
Philadelphia	Temporary	2
Northern Virginia	5	2
Seattle	2	
TOTALS (Permanent Employees)	10	4

All deputy director positions in the reorganized ROs would be eliminated.

I. Regional Offices and Reorganization - Historical Basis for Unequal Workload Distribution and Staffing Inequities

Prior to 1975, when the provision of federally-funded legal services was the responsibility of the Office of Economic Opportunity and the Community Services Administration, management of the field programs was the primary responsibility of ten regional offices, which were then located in federal buildings around the country. After the administration of legal services was transferred to the Corporation in 1975, the regional offices vacated the federal buildings and relocated in commercial office space. In 1976, LSC rearranged the regions and their jurisdictions into the present nine region configuration.

The 1976 reorganization was based upon an attempt to equalize the size of all regions from the standpoint of the number of attorneys employed by LSC recipients within the region in proportion to the number of regional office staff. The number of program staff attorneys, it was thought, directly corresponded to the workload of the regional offices. Other factors affecting regional office workload, such as the number of individually-incorporated recipients, and the managerial proficiency of recipients, and travel time to recipient programs, received little attention in the reorganization process. More importantly, the decision establishing the present regional office structure was made before LSC began receiving large increases in appropriations from Congress, and before the minimum access approach to funding was adopted. The combined effect of these two factors greatly altered the distribution of LSC funds among the regions. However, when it became apparent that there was a substantial shift in the distribution of LSC funds, there was no corresponding adjustment in RO staffing and responsibilities.

In 1978, the Corporation allocated additional resources to those ROs which experienced the greatest increase in the number of programs within their jurisdictions, but these revised allocations still did not adequately reflect the funding changes in the field. For example, the Boston and Atlanta ROs were each assigned six staff positions in 1977. In 1980, field grants in the Atlanta region were nearly four times as large as those of the Boston RO; however, the staffing level in the two ROs was twelve (12) and eight (8) respectively.

During the late 1970's, the ROs played an important role in the expansion of legal services programs from mainly large urban locations to all parts of the nation. By 1980, LSC had succeeded in establishing its presence in virtually every county in the United States, Puerto Rico, Guam, the Virgin

Islands, and Micronesia. However, as noted above, the RO configuration did not satisfactorily reflect the effects of the large increases in LSC appropriations, and the corresponding increase in the number and size of programs across the nation. As a result, this period saw the beginnings of a pattern of unequal distribution of the workload among the regional offices. The expansion period, and the steady growth of Federal appropriations to LSC, came to an abrupt end with the election of 1980, and the changing time forced LSC to take a close look at its operations. Consequently, the role of the ROs in a post-expansion period became an issue of critical importance for LSC.

In preparation for a twenty-five percent (25%) cut in the Corporation's appropriation, the Board of Directors met and considered a wide range of cost containment proposals, including the possibility of substantial restructuring of OFS. Consolidation and outright abolition of RO's was discussed by the Board of Directors at its October 2, 1981, meeting. One Board member remarked:

> I find the amount of money that will be allocated to regional offices... a little difficult to understand. I'd like to know what the continuing functions of the regional offices and their evaluation components will be, and whether it wouldn't be possible to cut them even further (Meeting Transcript page 66).

Another Board member remarked:

> Why couldn't we consolidate Boston and New York? Why couldn't we close Northern Virginia? Why couldn't we consolidate San Francisco and Seattle?... It seems to me if Boston and San Francisco are already down to a very small operation, then you can certainly consolidate these (Meeting Transcript - pp. 69-71).

Concern for the cost/benefit of the costly RO configuration was not confined to the Board of Directors. During the Board discussion of the RO issue, Mr. Bruce Morrison, then representing the Funding Criteria Committee of the Project Advisory Group and now a member of Congress, urged the Board to weigh carefully the staff's recommendation. He stated:

> Many people in the legal services community believe that the regional offices should have been abolished; that, given the size of the reduction, that given real skepticism as to what the regional offices would do to help programs in the years ahead, that the best thing to do was just abolish the regional offices. And things could be done out of Washington. There are

> arguments against doing that, and in the end those arguments prevailed in terms of the PAG position. On the other hand, we see no justification for maintaining the level of resources in regional offices that's proposed in this budget... But we do think that the -- that rather than cut 25%, which is what the Corporation has done -- at $241 million, our recommendation was that the regional offices be cut at least 50%... There's going to be a different kind of relationship between regional offices and programs, and we think that small offices can accomplish all the goals that are proper to leave those regional offices to do. So we urge you to at least compel the Corporation to reconsider the decisions it's made about the staffing levels of the regional offices. We think they should be cut further, and we think that if, under some scenario which I hope is not one we'll have to consider, that the budget is substantially further cut -- that under those circumstances, we should fairly quickly get to a decision of whether regional offices are worth maintaining at all (Meeting Transcript - pp. 92-93).

Ultimately, the decision was made to maintain the nine-office structure. However, ROs were still affected by the Corporate-wide reduction in force (RIF) plan. In 1982, the plan resulted in the realignment of several Corporate divisions, the actual elimination of some and the consolidation of others. Unfortunately, the RIF was accomplished without regard to the cost-effectiveness or organization efficiency of the configuration that would result, especially with respect to the ROs. As a result of the decision to conduct a RIF and to retain a physical presence in nine cities, OFS came out of the RIF with its staff resources spread even thinner. This staffing pattern exacerbated the unequal distribution of work among the ROs. In one region, eight (8) staff members had oversight responsibility of twenty-three (23) LSC grantees receiving nearly $26,000,000 in annual basic field funds. In another region seven (7) staff members had oversight responsibility of sixty-five (65) LSC grantees receiving $52,000,000 in annual basic field funds.

Obviously, the decision to retain nine ROs also meant retaining nine separate management and administrative units (a configuration that proved less than cost-effective) because, among other reasons, relatively fewer staff were supervised by relatively more managers. Thus, the RIF resulted in an extraordinary high ration of well-compensated managers to professional and support staff in the ROs.

The proposed four (4) ROs configuration, we believe, would materially and substantially eliminate the current staffing inequities and the uneven workload distribution among RO's (see Attachments 1 and 2). The proposed geographical layout and staffing plan would more locally bring about the achievement of this workload and staffing equalization objective based upon the premise that the actual numbers and funding levels of recipients correspond directly to RO workload. While other factors (such as managerial proficiency) clearly affect RO workload, they are considerably more difficult to quantify for this purpose. Likewise, the proposal eliminates considerable overhead and unnecessary layers of top management.

II. Reorganization As It Affects The Enhancement of Monitoring and the Elimination of Needless Duplication of Effort and Functions

	In the late 1970's and through the early 1980's, regional offices had the following responsibilities:	Headquarters Division And/Or Unit Now Performing These Functions Also:
(1)	Monitor and evaluate recipient compliance with the Act, regulations, instructions, directives, and grant conditions;	
(2)	Initiate proceedings to deny refunding or terminate grants;	(OCR)
(3)	Review audits for issues of funds management and weaknesses in financial systems;	(Audit)
(4)	Assure recipients' boards of directors are constituted and operated properly;	(M & EU)
(5)	Review grant and resolve complaints of improper activities by LSC grantees with the cooperation of state advisory councils when appropriate;	(OCR)
(6)	Review grant applications for accuracy and completeness and prepare special grant conditions when appropriate;	(Grants and Budget Unit (G & BU) & M & EU)
(7)	Review recipient policies required by the Act and regulations to ensure compliance and efficiency;	(M & EU and G & BU)

(8) Assure prompt compliance with new policies required by the Act, or by the LSC Board; (M & EU)

(9) Assist in the collection of data for national surveys;

(10) Assist recipients with new efforts such as expansion in 1978 through 1981 and retrenchment in 1981-1982;

(11) Serve as a clearinghouse for information to assure that successful systems are transmitted to recipients; (M & EU and OIM)

(12) Provide ongoing consultation to assist recipients in providing economical and effective legal services; (G & BU, M & EU, OIM)

(13) Monitor recipient spending on a quarterly basis;

(14) Approve purchase requests and the retaining of consultants.

In revisiting these RO functions, OFS considered what services, if any, could best be provided via a centralized mechanism which would insure consistent and uniform treatment of all recipients in a manner which clearly has never existed and does not exist at present. Such consistent and uniform treatment of recipients has never been achieved and could not under the present OFS structure.

Of the above-described responsibilities, all, [with the exception of items numbered one (1), ten (10) - for which no need currently exists, thirteen (13) and fourteen (14)] are currently (partially, at least) performed by units within OFS and/or other LSC divisions located in headquarters. Needless duplication of effort would be eliminated and substantial progress towards the consistent and uniform treatment of recipients would be achieved by placing the responsibility for review and/or action regarding the indicated areas of responsibility, wholly within those units and divisions which currently share joint responsibility with the RO's.

The Corporation's failure to enforce the law has been brought to the attention of Congress by the public. Consequently, Congress has scrutinized the Corporation's activities, and has repeatedly expressed its concern about the illegal activities of the LSC grantees. It has placed much of the blame on the Corporation for its failure to enforce Congressional mandates, and has demanded that the situation be remedied. Recent GAO investigations have re-enforced the Congressional concern by finding that the Corporation has been less than vigorous in its enforcement of the LSC Act, regulations, and Congressional amendments attached to LSC appropriations. Given the Corporation's historical record of enforcing compliance, any ambiguity about the LSC's oversight and enforcement responsibilities could not be perpetuated.

In response to Congressional concern and the GAO findings, the Corporation took several steps to ensure that its recipients comply with the LSC Act and Appropriations requirements. The new LSC administration has enacted regulations implementing those amendments, many of which restricted political activities of LSC recipients, and has thus focused recipient functions upon the direct delivery of legal services to individual clients.

The Corporation has also taken steps to organize its own functions so that they work more efficiently, to identify problems among recipients, to provide assistance where appropriate, and to initiate sanctions where necessary. For instance, LSC established the Office of Compliance and Review (OCR). The responsibility of investigating complaints and taking disciplinary action involving LSC grantees was transferred to OCR from the regional offices. The transfer mitigated certain of the difficulties inherent in the conflicting roles previously assigned to the regional offices, by removing from them the task of imposing sanctions on recipients. However, the "dual role" was still present in that regional offices retained primary monitoring responsibility to identify problems and refer these to Headquarters.

The concerns raised about the past failure of the Corporation to enforce the Act and regulations focused attention on the oversight and evaluation activities of the ROs. OFS conducted a lengthy review of the performance of the ROs in carrying out their monitoring oversight functions, and in carrying out Corporation directives in a consistent manner. The evaluation methodology, the work product, and the effectiveness of RO monitoring have all been examined.

This review has revealed substantial irregularities in the monitoring and oversight performed by the ROs. The findings indicate that the ROs largely operate in an autonomous manner, through often inconsistent and sometimes arbitrary implementation of LSC rules, regulations, instructions, and guidelines. These management practices continue to exist despite a year-long effort to bring a more objective, consistent, and centrally coordinated approach to OFS's relations with recipient programs. As a consequence, LSC's relations with its recipients still vary from region to region and from program to program.

The pattern of inconsistent treatment of LSC recipients can be illustrated by the implementation of a directive from the LSC Board of Directors concerning the reduction of $41 million in fund balances (unexpended grant balances) maintained by certain recipients at the end of 1981. In one region, a recipient maintained a fund balance of 66 percent of the previous year's grant and was subject to sanctions by a RO. However, other recipients with fund balances in excess of 66 percent and as large as 97 percent escaped any sanctions. Out of 18 programs which had fund balances over 64 percent, six (6) received some form of disciplinary action. Of the 18 programs, five (5) were judicare programs or programs having a judicare component of more than 15 percent of the program's annual budget. Each of these five (5) programs received sanctions. These determinations are especially ironic since Judicare programs have a legitimate need to retain reserves for payment on cases referred out, but not billed. The inequitable manner in which the ROs were treating recipient fund balances came to the attention of the Director of OFS. In response, he issued OFS Memorandum No. 83-16 (March 17, 1983), which instructed the ROs to issue no waivers allowing recipients to retain fund balances over ten (10) percent without approval of OFS headquarters.

Further scrutiny of RO activities and work product has revealed practices that compromise the necessary arms-length relationship between grantor and grantee. For example, one regional director, absent of the approval of the director of OFS, invited an LSC grantee (over whose operations his office had monitoring responsibilities) to share office space during a period in which the same grantee was involved in litigation against LSC.

In early 1983, OFS Director Gregg Hartley concluded that the monitoring and evaluation process had to be restructured in order to correct management practices which allowed the ROs to operate from arbitrary and capricious standards. OFS implemented several changes designed to reduce the opportunity for abuse in the monitoring and evaluation process and to promote consistent and fair treatment of LSC grantees.

Overall policy for the conduct of monitoring and evaluation was outlined by the OFS Director in Memorandum 83-20 (March 23, 1983). Two broad objectives for each monitoring visit and the ensuing report were set forth: (1) the report should assess the recipients' compliance with the Act, regulations and applicable grant conditions; and (2) the report should indicate whether services are being provided in an effective and economical manner. The memorandum also set forth several elements which would make the process more objective and consistent:

1) Each monitoring team would include at least one independent consultant. In this way, the perspective of a non-LSC staff member would be represented in each report. This pattern would promote the independence and objectivity of the monitoring process as required by the Act.

2) To meet criticisms that the existing monitoring practices mixed LSC's review and its policing roles, follow-up on possible violations would be referred to the Office of Compliance and Review, which was then newly operational.

3) To enhance the uniformity with which monitoring was conducted, a new LSC headquarters unit, the M & EU, would work with the ROs to ensure that OFS implemented policies and interpreted those policies in as uniform and consistent a manner as possible throughout all its service areas.

The M & EU was operational as of the Fall of 1983. In the first few months of its operations, the Unit performed a clearinghouse function by proposing, drafting, and discussing monitoring instruments and criteria with RO staff and field program representatives. It performed a clerical function by confirming that RO reports adhered to a standard format. Its main review function was limited to verifying that recipient programs had not taken strong issue with a RO report. If such was the case, it would take a lead role in a follow-up. Regional Directors, however, remained accountable for the quality of the report within the framework of the general monitoring goals outlined by OFS headquarters. The small headquarters staff did not take issue with or second-guess RO findings unless the recipient recorded an objection to the RO assessment.

The first comprehensive assessment of the RO's monitoring effectiveness was performed in March, 1984. Sample reports were compared to independent sources of information, such as case statistical reports available to headquarters as well as ROs, recipient budgets and refunding applications approved by the ROs, and so on. This review indicated that the "modified centralization" in place for the preceeding months, and the reduction in RO responsibilities to allow for more of a focus on monitoring, had done little to improve the thoroughness of the oversight carried out there. Recent OFS efforts to make the monitoring and evaluation process more objective and consistent met, and continue to meet with bureaucratic inertia in the ROs. Several areas have been identified in which ROs failed to carry-out the instructions set forth in OFS Memorandum 83-20, and in subsequent policy memoranda.

In general, the problem areas were identified as the following:

1) Insufficient coordination between the activities of ROs and the monitoring policies formulated by LSC headquarters.

2) Insufficient emphasis on the monitoring objectives set out in the memoranda referenced above: namely, examination of compliance in a manner that would exceed verifying that a formal recipient policy is in place; and analysis of the cost-effectiveness of the recipient's service delivery.

In summary, the review of RO functions shows that the organizational benefits of the current RO configuration are indeed limited. Certain RO functions are now performed efficiently by other Corporation divisions. In the case of the monitoring function, the RO's prime responsibility, performance has been inconsistent. Even a modified consolidation, under which final actions must be reviewed by headquarters, has not proved completely workable, since headquarters staff have found themselves either duplicating RO functions, or repeatedly checking to see that these functions are indeed being performed at all.

The remaining RO role, technical assistance to recipients, was largely moved out of the Corporation as part of the previous administration's decentralization plan. Under this plan, LSC made special grants to organizations such as the National Legal Aid and Defender Association to perform technical assistance services. In view of the difficulty experienced by the Corporation in monitoring the effectiveness of these technical assistance grants, this function has also been recentralized.

III. OFS Reorganization Viewed In Light of Fiscal Year 1986 Budget Constraints

The current LSC administration, pursuant to an explicit Board Directive, has set as the centerpiece of its mandated tasks the policy that the greatest possible portion of both LSC and recipient resources be expended for the direct delivery of legal services to individual eligible clients. This goal of reducing waste and bureaucratic inefficiency is in keeping both with LSC's organizational status as a private corporation and with its statutory mandate to operate cost-effectively.

Like other LSC divisions, OFS has scrutinized its operations from both the standpoint of cost-effectiveness and efficient management practices. OFS thus proposes the reorganization under consideration here in order to assist the Corporation in arriving at a total Management and Administration budget in the amount of $10.7 million per the instruction of its Board of Directors.

At the February 21, 1985, meeting of the Audit and Appropriations Committee, Budget Director David Gessner presented FY 1986 budget projections for corporate Management and Administration. He projected that a minimum of $11.9 million would be required to maintain the 1985 level of activity into 1986. Of this figure, $5.3 million is attributable to OFS (headquarters and ROs). In response to the Chairman's question about potential savings that could bring the corporate Management and Administration budget to $10 million, OFS was asked to present a series of budget projections showing the financial effect of consolidating OFS operations. These showed alternatives ranging from maintaining the current arrangement of nine regional and one headquarters office, to configurations that would include headquarters and one field office. The consolidated OFS budget projection under these options ranged from $4.4 million to $6.4 million (See Tables 1 - 4).

TABLES

	(1) Freeze in 1986 at Current Level (Fy 86 Operating Base)	(2) Full Staffing in OFS/HQ and ROs
OFS/HQ	1,877,200	1,768,625
ROs	3,405,400	4,366,252
Total	5,282,600	6,143,877
Other Mgt. & Admin.	6,575,400	6,575,400
TOTAL Corporate Mgt. & Admin.	11,858,000	12,710,277

	(3) Full Consolidation in OFS/HQ	(4) Option I OFS/HQ & Denver Field Office
OFS/HQ	4,429,747	3,748,325
ROs	-0-	755,701
Total	4,429,747	4,504,126
Other Mgt. & Admin.	6,575,400	6,575,400
TOTAL Corporate Mgt. & Admin.	11,005,147	11,079,526

	(5) Option II OFS/HQ & Four Field Offices
OFS/HQ	2,759,000
ROs	1,341,000
Total	4,100,000
Other Mgt. & Admin.	6,600,000
TOTAL Corporate Mgt. & Admin.	10,700,000

The most expensive of the options presented to the Committee was the budget that would be required to fully staff and maintain the current RO configuration. The other projections showed the savings that could be achieved over the current configuration by selecting other scaled-down options. David Gessner's corporate-wide Management and Administration projections, on the other hand, displayed a minimum funding base for 1986 that would be required to maintain the current level of operations. Note that at the current level of operations, OFS, and particularly the ROs, have already absorbed a $1 million cut from the budget level required for full staffing of current vacancies.

To display the effect of various OFS budget options on the FY 1986 corporate Management and Administration projection, OFS budget projections have been integrated into the FY 1986 funding base. Budget lines for corporate Management and Administration outside OFS are frozen at the FY 86 base levels projected by David Gessner. The impact of various OFS configurations on the corporate Management and Administration budget can be seen in the previous tables. Tables 1-4 show OFS at various levels. As noted, the remainder of corporate Management and Administration (M & A) attributable to other divisions is held constant.

Table 1 contains the figures presented in the FY 1986 funding base projected by the Budget Director. Tables 2-4 substitute budget levels for headquarters, ROs and OFS consolidated with FY 1986 projections drawn from an updated version of the analysis which OFS presented to the Committee on February 21. Table 2 shows the OFS budget that would result from a Board decision to maintain the current nine-office structure and to fill vacancies in these offices. Table 3 shows the budget projection under full consolidation, which would assume that all regional offices were closed. Table 4 displays budget projections if regional offices were closed and a field office maintained in Denver, Colorado. Table 4 was the staff's recommendation to the Board last year. We had previously refined the monitoring and travel costs projections to factor in additional increases in travel costs and incremental usage of monitoring consultants under full or partial consolidation. The net effect of these changes was to increase the projected annual cost of consolidated operations by $250,000 and to make the projected savings figures even more conservative. Other assumptions remained unchanged. Program evaluation is assumed to be conducted, as now, on an eighteen month cycle.

In addition to these adjustment, we have updated the budget analysis we submitted to the Committee on February 21 by adding an extra column on each page to show the savings under that option over the FY 86 operating base projected by David Gessner. In other words, the attached version shows the relative savings between the various options as before. In addition, it shows the absolute savings to be achieved under each option versus the FY 86 operating base budget 'freeze' at FY 85 activity levels. The distinction between relative savings over a range of options and absolute savings over some particular budget mark, is critical to the Committee's consideration of OFS reorganization. Note that in Table 3, the 1986 M&A projection is $11,005,147, even with all regional offices closed. In other words, if the decision to close regional offices were to be predicated on the goal of a $10 million corporate budget mark, another $1 million would still need to be cut to achieve that goal. That does not alter the fact that a decision to close all regional offices would achieve relative savings of $1.7 million. The full effect of closing all regional offices is not dramatized between Table 1 and Table 3 because Table 1 is based on a freeze at 1985 levels. This 1985 level already includes almost $1 million in RO cuts, because the ROs have been under a hiring freeze pending a decision on reorganization.

On the other hand, a resolution by the Board to maintain the historical nine-office configuration would assume a corollary commitment to staff those offices, and would require almost $1 million above the $11.9 million level in Table 1 (See Table 2).

Tables 1-4 and the foregoing narrative are again being provided in order to provide a basis for comparing the budget projections which were previously presented with the current budget projections which show the financial effect of the proposed four (4) ROs option (see Table 5 - Option II).

Even at the approximately $11 million bottom line figure contained in Table 3, an additional $300,000 would still need to be cut from the OFS budget in order to achieve the $10.7 million corporate budget mark, notwithstanding the extreme disruption (and the costs probably attendant thereto) which would result under the full consolidation depicted in Table 3. It should be pointed out, however, that the remainder of the corporate Management and Administration budget attributable to other divisions is, under Option II (see Table 5) set at $6.6 million.

CONCLUSION

This proposal has clear advantages over the present RO configuration. First, the present configuration is highly unbalanced with small regions such as Seattle and Boston (approximately nineteen (19) and fifteen (15) programs respectively) either having too few staff to be effective or being overstaffed. Secondly, our current staffing pattern cannot reasonably support 9 ROs. Any office with less than 5 or 6 staff is too small to be effective and must ask for assistance in most crises because neither the numbers nor the range of talents needed are available in the office. Third, the large number of ROs makes for confusion and lack of uniformity. It also leads to paying an excessive number of high (Level 7) salaries for personnel managing small offices and excessive costs for leasing 8 separate ROs.

By concentrating the same number of personnel in four offices, all these problems are eliminated. The four offices will be large enough to justify a Level 7 Director since they are operating away from close supervision; similarly, leasing costs for four offices will be eliminated and the space in the other four fully utilized. Essentially, this reorganization allows OFS to benefit from economies of scale in its ROs.

This proposal is superior to the single office plan in that it preserves balanced geographical coverage of the country, thus cutting down on travel costs and excessive distance both physical and psychological. Monitoring will be greatly facilitated by having a base office in the general area of the country in which the monitoring ~~is~~ to take place. Obtaining independent consultants and setting up monitoring teams for distant locations from Washington, D.C. would be difficult and expensive, even with the slight assistance of one office in Denver for the far West.

The proposed four office structure does not present the danger of hidden, unquantified costs which is very probable with the one office alternative. Extra travel costs over the present will be minimal. Unaccounted for but necessary RO functions will not materialize after the reorganization as can be expected with the one office alternative.

The transition from the present configuration is far simpler and cheaper. The offices to be closed have a total of only seven permanent employees. Thus the estimated $650,000 transition costs of moving to the single office configuration is reduced to a maximum of $268,000 and probably can be reduced even lower. Furthermore, since these offices are either non-functional or barely functional at present owing to low personnel levels, their closing will not be programmatically disruptive. Were we to close all but Denver, the disruption caused by the transition would, in our estimation, reduce program and monitoring activity catastrophically for months, just when there is a desire to beef up monitoring activity.

The four office proposal strengthens monitoring, making ten (10) more positions available in Headquarters and in addition freeing more regional personnel for monitoring, because with fewer, larger offices and more emphasis on monitoring we will get a substantial increase in monitoring effort from the Regions. It saves approximately $1.1 million over the current budget, reducing the OFS budget from $5,282,600 to $4.1 million (see attachment 7). It is workable, it will not cause excessive disruption, it can be implemented quickly, and it allows for a sustainable increase in monitoring. The additional yearly savings of about $200,000 projected for the one office option may be illusory, would cause great disruption, and would lead to additional one-time costs of over $350,000.

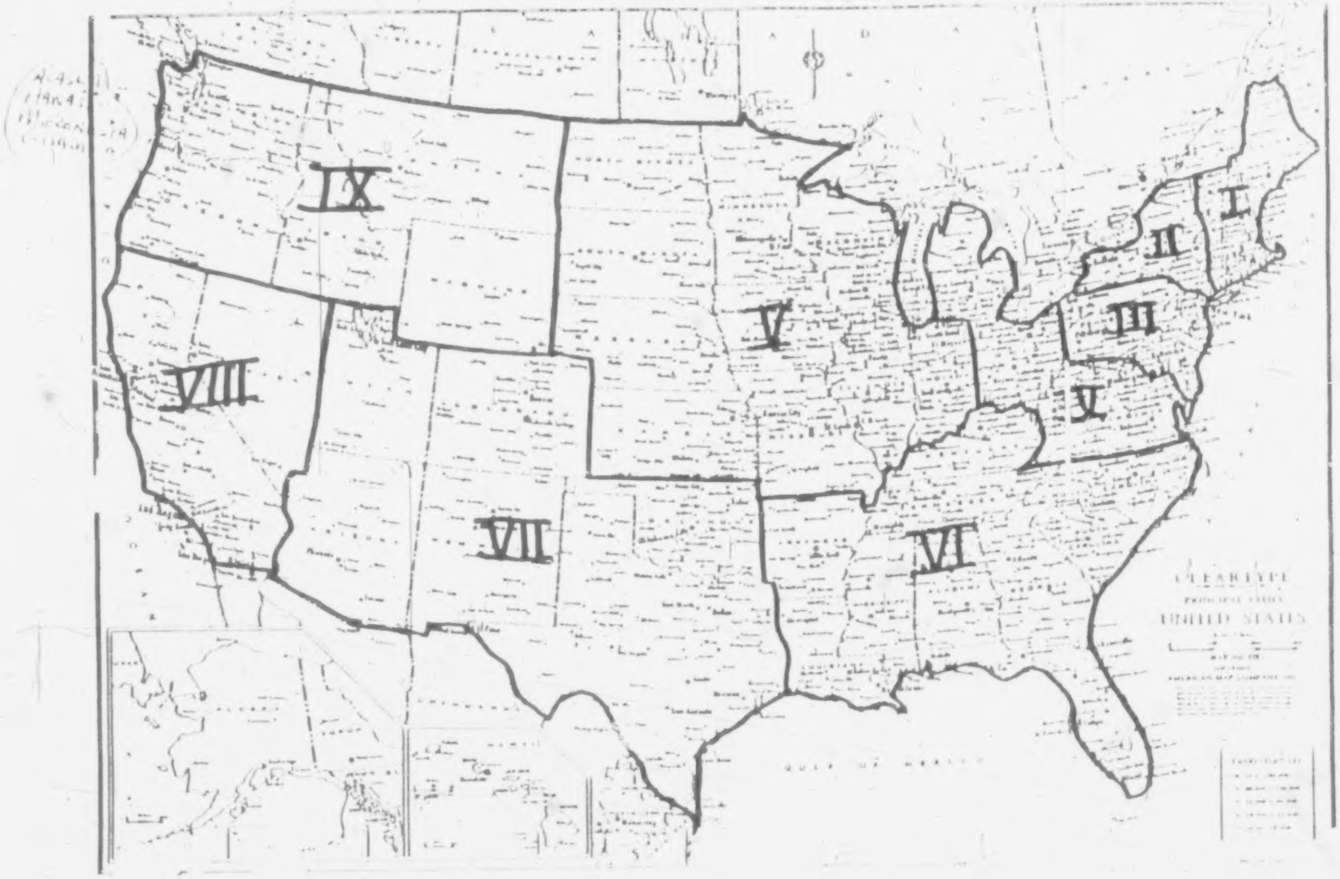
ATTACHMENT

CURRENT CONFIGURATION FOR LSC REGIONAL OFFICES - FIGURES BASED ON 1984 - 1985 GRANTS AND CONTRACTS SUMMARY

Region	State	Nos. Prog.	Funding '85 BF, VA, M, [illegible]
I	Connecticut	3	$ 2,316,016
	Maine	1	1,398,505
	Massachusetts	11	5,799,357
	New Hampshire	2	743,221
	Rhode Island	1	851,536
	Vermont	1	701,555
		19	12,010,190
II	New York	20	19,291,237
	Puerto Rico	2	15,865,423
	Virgin Ils.	1	443,098
		23	35,559,758
III	Delaware	1	533,510
	Dist. Col.	3	2,097,905
	Maryland	1	3,327,338
	New Jersey	15	5,314,149
	Pennsylvania	19	9,398,200
		39	21,171,002
IV	Michigan	13	3,424,772
	Ohio	16	9,252,586
	Virginia	14	5,481,575
	West Virginia	4	2,366,354
		47	26,035,327
V	Illinois	5	10,150,433
	Indiana	4	4,225,716
	Iowa	2	2,583,701
	Kansas	1	2,095,058
	Minnesota	5	3,508,377
	Missouri	7	5,047,360
	Nebraska	3	1,549,344
	No. Dakota	1	853,470
	So. Dakota	2	675,654
	Wisconsin	4	3,597,187
		34	34,386,300
VI	Alabama	3	6,428,784
	Arkansas	7	3,793,219
	Florida	12	11,181,583
	Georgia	2	7,796,627
	Kentucky	7	5,572,632
	Louisiana	11	6,954,436
	Mississippi	8	6,042,021
	No. Carolina	5	7,889,368
	So. Carolina	6	4,570,901
	Tennessee	8	6,463,557
		69	66,593,128
VII	Arizona	4	3,060,088
	Colorado	5	2,871,943
	New Mexico	4	2,026,563
	Oklahoma	2	3,478,547
	Utah	1	1,240,627
	Texas	11	18,468,861
		27	31,146,629
Native American Programs			
	Arizona	2	2,353,497
	California	1	727,360
	Hawaii	1	101,940
	Minnesota	1	190,671
	New Mexico	1	347,145
	N. Dakota	1	123,059
	Oklahoma	1	289,497
	So. Dakota	1	932,397
	Wyoming	1	178,465
		10	5,244,531
VIII	California	28	26,630,545
	Nevada	2	709,098
		30	27,339,643
IX	Alaska	1	1,520,236
	Hawaii	1	909,161
	Idaho	1	1,245,154
	Montana	1	1,016,026
	Oregon	4	2,741,754
	Washington	3	4,036,214
	Wyoming	2	418,545
	Micronesia	1	886,840
	Guam	1	170,192
		15	12,944,122

Attachment 1A

CURRENT REGIONS


Alaska
Hawaii
Micronesia
Guam
I
II
III
V
V
VI
VII
VIII
IX
CLEARTYPE
PRINCIPAL CITIES
UNITED STATES
GULF OF MEXICO

G

[illegible]	[illegible]	[illegible] PROGRAMS	PROPOSED FUNDING '85/'86
	[illegible]	3	2,097,905
	[illegible]	[illegible]	533,510
	[illegible]	3	2,516,016
	[illegible]	[illegible]	1,398,505
	[illegible]	[illegible]	5,799,357
	[illegible]	[illegible]	3,327,028
	[illegible]	[illegible]	743,221
	[illegible]	[illegible]	5,934,349
	[illegible]	[illegible]	19,291,237
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	[illegible]	14	5,481,575
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		97	61,440,958
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	[illegible] ISLANDS	1	343,098
		3	16,208,521
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	[illegible]	3	6,428,784
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	[illegible]	5	7,889,368
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		69	66,693,120
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	[illegible]	[illegible]	5,047,360
	[illegible]	[illegible]	1,549,344
	[illegible]	[illegible]	853,470
	[illegible]	2	675,654
	[illegible]	4	3,597,187
	[illegible]	[illegible]	8,424,712
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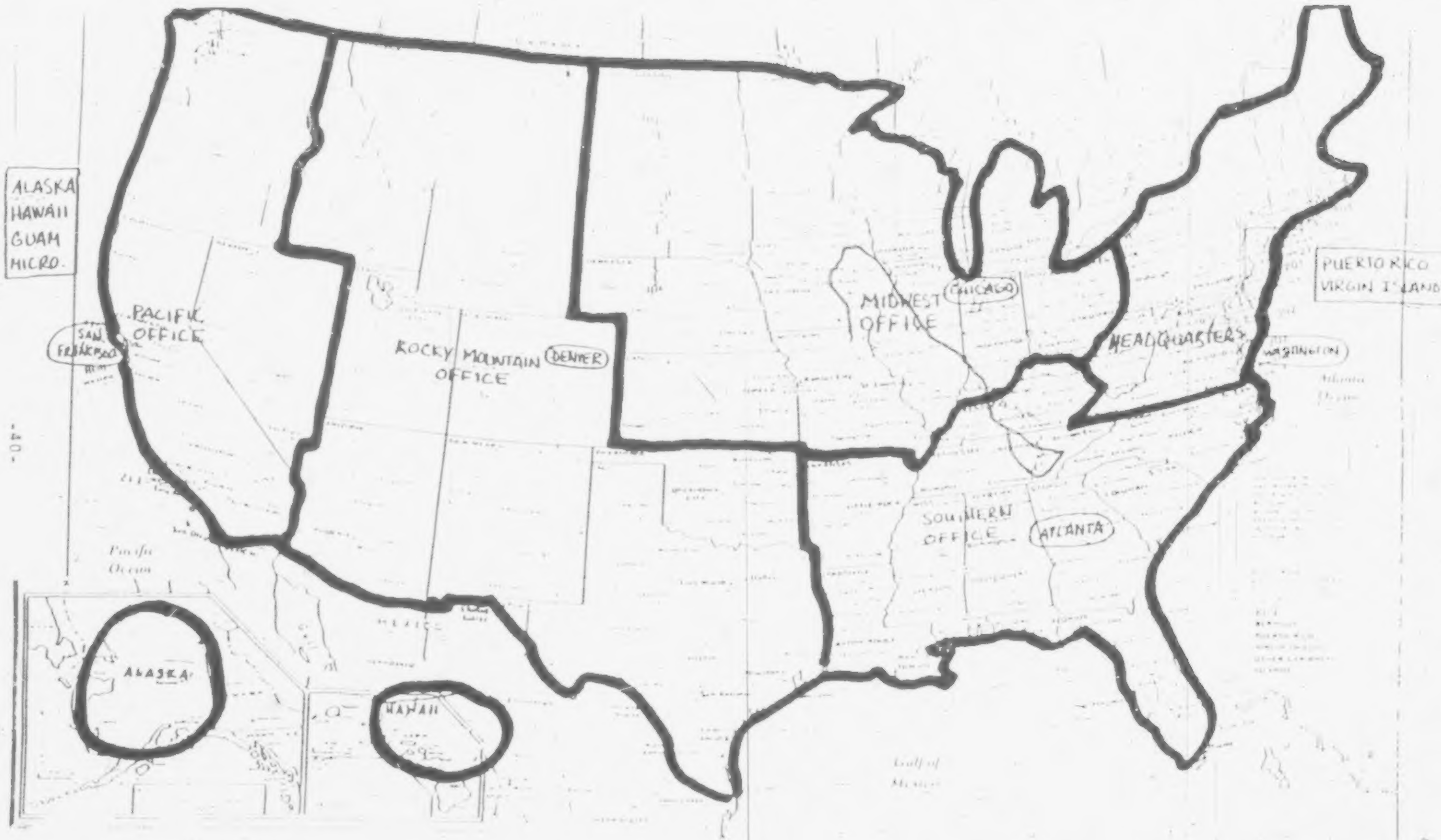
	[illegible]	4	2,871,943
	[illegible]	4	3,060,088
	[illegible]	4	2,026,363
	[illegible]	2	3,478,547
	[illegible]	11	18,468,061
	[illegible]	1	1,240,627
	[illegible]	1	1,016,026
	[illegible]	2	418,545
	[illegible]	1	1,245,154
		30	33,826,354
	[illegible]	10	5,244,631
		40	39,070,985
	[illegible]	28	26,630,545
	[illegible]	2	709,098
	[illegible]	4	2,741,754
	[illegible]	3	4,036,214
	[illegible]	1	1,520,236
	[illegible]	[illegible]	909,161
	[illegible]	[illegible]	886,840
	[illegible]	[illegible]	170,192
		41	37,604,040
	[illegible] TOTAL	313	273,191,930


ALASKA
HAWAII
GUAM
MICRO.
PACIFIC OFFICE
SAN FRANCISCO
ROCKY MOUNTAIN OFFICE
DENVER
MIDWEST OFFICE
CHICAGO
HEADQUARTERS
WASHINGTON
PUERTO RICO
VIRGIN ISLANDS
SOUTHERN OFFICE
ATLANTA
Pacific Ocean
MEXICO
Gulf of Mexico
ALASKA
HAWAII

"EXHIBIT"

PROPOSAL FOR A FOUR REGIONAL OFFICE ORGANIZATION

EXPENSE GROUP	CURRENT BUDGET	PROPOSED BUDGET	INCREASE (DECREASE)
(1) PERSONNEL COMPENSATION & EMPLOYEE BENEFITS	2,578,500	2,611,000	32,500
(2) TEMPORARY PERSONNEL & CONSULTANTS	543,700	47,000	(496,700)
(3) MONITORING CONSULTANTS & TRAVEL EXPENSE	1,149,100	986,000	(163,100)
(4) OTHER TRAVEL AND TRANSPORTATION	195,700	95,000	(100,700)
(5) COMMUNICATIONS COSTS	67,100	45,000	(22,100)
(6) RENT AND OCCUPANCY COSTS	348,200	190,000	(158,200)
(7) PRINTING AND REPRODUCTION	65,500	38,000	(27,500)
(8) OTHER OPERATING COSTS	296,000	70,000	(226,000)
(9) CAPITAL EXPENDITURES	38,800	18,000	(20,800)
TOTAL	5,282,600	4,100,000	(1,182,600)

APPENDIX -- OFS BUDGET EXPLANATION

In response to the Board Chairman's questions about potential savings in the LSC Management and Administration operating costs, Budget Director, David Gessner, set a ceiling of $4.1 million for the Fiscal Year 1986 Office of Field Services (OFS) budget allocation. Initial projections prepared by OFS indicated that an operating budget of $4.8 million was required to achieve its goals and objectives. Review of these budget projections for additional cost-savings resulted in a revised budget projection of $4.45 million. On the advisement of the Budget Director, a "slippage" factor was built into the second budget revision. Additional reductions were also made to obtain the requisite budget allocation of $4.1 million (OFS/HQs $2.8; ROs $1.3). Savings of $1.2 million represent a 23% reduction of costs in all categories from the current level of operations, with the exception of a marginal increase in cases for personnel compensation and fringe benefits. All of these factors result in a very tight budget estimate for 1986. (See the attached exhibit that displays the comparative 1985 and 1986 budget projections.)

The main concepts that assisted in the computation of these decision costs are drawn from accounting and economic theory. Technically, the incremental costs technique and the frozen standards method were selected as the primary tools for the following reasons:

1) Incremental cost analysis emphasizes the effect of cost variability upon decisions. It tells management to what extent incremental contributions will change if discretionary costs are held constant. Incremental cost techniques also highlight unfavorable changes as they are occurring, therefore management can immediately react and take corrective action. Such analysis is critical given the limited resources available under this budget.

2) Frozen standards are simply normal cost standards which by decision, are fixed at a particular point in time to be used as a comparison for future standards applicable to the same cost item or product. Comparisons can more readily be made for each cost category, including total direct costs and variable indirect costs. This permits a detailed comparison and follow-up to measure success or failure in achieving the necessary cost reductions.

MENDEZ INSERT FOR:

PAGE 9 -- QUESTION 4

M E M O R A N D U M

DATE: March 19, 1985

TO: All LSC Staff

FROM: Joshua H. Brooks, Jr., Deputy Director
Office of Field Service JHB

SUBJ: Regional Directors Meeting

Please be advised that the Office of Field Services has scheduled a Regional Directors Meeting to be held on Wednesday, March 20, 1985, in the eighth-floor conference room here at headquarters.

You are all cordially invited to stop by and break bread with us between 12:00 Noon and 1:15 P.M.

Please take advantage of this opportunity to meet the Regional Directors. Attached for your information is a copy of the Agenda for this meeting.

JHB/bt

REGIONAL DIRECTORS MEETING
MARCH 20, 1985

AGENDA

8:30 A.M. -	Coffee and Pastry Served
9:00 A.M. -	Welcome and Opening Remarks - Peter Broccoletti, Acting Director, Office of Field Services
	John Meyer, Acting, Chief of Staff
9:30 A.M. -	Legislative Update - James Streeter, Congressional Liaison
	Questions and Answers (Q&A) to follow
10:00 A.M. -	Board of Directors Update - Dennis Daugherty, Secretary to the Board
	Q&A to Follow
10:30 A.M. -	Update - Recent Changes to 45 C.F.R. The handling of requests for General Counsel opinions
	Q&A to Follow
11:00 A.M. -	The functioning of the Office of Compliance and Review and its relationship to Regional Offices - Victor M. Fortuno, Acting Director
	Q&A to Follow
11:30 A.M. -	Audit Division expansion and its increased on-site grantee monitoring responsibility and the relationship to Regional Offices - Jotinder Singh, Senior Auditor
	Q&A to Follow

AGENDA (Continued)

12:00 - 1:15 P.M.	OPEN LUNCH (Catered Lunch)
1:15 P.M. -	New CSR, delinquent CSR's and computerized accounting training - Bernard Frey, Director, Office of Information Management
	Q&A to Follow
1:45 P.M. -	Gail Francis, Manager, OFS, Grants and Budget Unit
	Q&A to Follow
2:15 P.M. -	Keith Osterhage, Acting Manager, OFS, "New" Program Development and Substantive Support Unit
	Q&A to Follow
2:45 P.M. -	Ongoing Issues, The Monitoring of LSC recipients. Processing visit reports - John Meyer, Acting Chief of Staff Paul Reddick, Acting Manager, OFS Monitoring and Evaluation Unit (M&E) The Contracting Process - Patricia Batie, Assistant Manager, OFS, Monitoring and Evaluation Unit
	Q&A to Follow
3:45 P.M. -	The Elderlaw Project Beverly Bunn, Special Counsel for Clients with Access Problems
	Q&A to Follow
4:00 P.M. -	Update - Reginald Heber Smith Fellowship Program Joshua H. Brooks, Jr., Barney Hamlin, Consultant
	Q&A to Follow
4:15 P.M. - *	Reorganization - Paul Reddick, Acting Manager, OFS, Monitoring and Evaluation
	Q&A to Follow

b. WILL RECIPIENTS AND THE LEGAL SERVICES COMMUNITY BE GIVEN AN OPPORTUNITY TO PRESENT THEIR VIEWS TO THE BOARD?

A: Yes, they have been given the opportunity to testify or write.

c. WILL THESE PARTIES BE GIVEN AN OPPORTUNITY TO REBUT ANY REPORTS OR TESTIMONY GIVEN BY LSC STAFF ON THIS ISSUE?

A: Yes, they have been given the opportunity.

4. HAS THE BOARD RECEIVED ANY REPORTS OR RECOMMENDATIONS ON REGIONAL OFFICE REDUCTION OR ELIMINATION WHICH HAVE NOT BEEN MADE PUBLIC? IF SO, WHAT REPORTS? WHEN WILL YOU MAKE THEM PUBLIC?

A: NO.

5. HOW WILL YOU REPLACE THE FUNCTIONS OF THE REGIONAL OFFICES THAT YOU HAVE ELIMINATED?

A: They will be combined into four regional offices if the staff recommendation is accepted.

6. DO YOU THINK THE FUNCTIONS OF REGIONAL OFFICES WILL BE NECESSARY IN THE FUTURE? IF NOT, WHY NOT?

A: Yes, please see the staff report attached hereto.

MR. MENDEZ,

1. YOU TOLD THE LABOR AND HUMAN RESOURCES THAT YOU WOULD REALLOCATE THE BULK OF THE REMAINING MIGRANT FUNDING (AFTER A 21.6% CUT) TO CALIFORNIA, FLORIDA AND TEXAS. THIS WOULD BE A MAJOR CHANGE IN THE LEGAL SERVICES DELIVERY SYSTEM IN DIRECT CONTRAVENTION OF CHAIRMAN DURANT'S PROMISE ON BEHALF OF LSC TO MR. KASTENMEIER THAT NO SUCH CHANGE WOULD BE MADE WITHOUT A FULL STUDY AND CONGRESSIONAL CONCURRENCE. DO YOU AGREE WITH MR. DURANT'S POSITION?

A: I stated to the Committee that I thought it most appropriate to fund those three states in proportion to the migrant/months. However, I must convince my other board members. It is my understanding that the response of LSC to Mr. Kastenmeier was made by President Opsut, not Mr. Durant. (See the attached).

2. YOU ADMIT THAT A NEW COUNT OF MIGRANTS IS NECESSARY, YET AS OF NOW YOU DO NOT KNOW WHO WILL DO IT OR HOW IT WILL BE DONE. DON'T YOU THINK THAT IT WOULD BE APPROPRIATE TO COMPLETE YOUR STUDY FIRST BEFORE WREAKING HAVOC AMONG MIGRANT PROGRAMS?

A: The information I received indicates the Migrants were being funded twice for their population. Therefore an accurate count should allow us to reallocate more funds to basic field programs.

3. HAVE YOU ASKED MIGRANT PROGRAMS OR BASIC FIELD PROGRAMS ABOUT YOUR IDEA AS TO A FUNDAMENTAL SHIFT IN MIGRANT PROGRAM FUNDING? WHAT HAVE THEY TOLD YOU? SPECIFICALLY, WHAT ARE THEIR CONCRETE RESPONSES?

A: I do not believe that proposed funding is a fundamental shift. I heard testimony from the migrant programs, and met with various groups informally. I used this information to make my decision.

MENDEZ INSERT FOR:

PAGE 11 -- QUESTION 1

NINETY-NINTH CONGRESS

PETER W. RODINO, JR. (N.J.), CHAIRMAN

JACK BROOKS, TEXAS
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
JOHN F. SEIBERLING, OHIO
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
SAM B. HALL, JR., TEXAS
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
FREDERICK C. BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA

HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
THOMAS N. KINDNESS, OHIO
DAN LUNGREN, CALIFORNIA
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
E. CLAY SHAW, JR., FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DEWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HANK BROWN, COLORADO
PATRICK L. SWINDALL, GEORGIA
HOWARD COBLE, NORTH CAROLINA

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515
Telephone: 202-225-3951

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APR 09 1985
EXECUTIVE OFFICE

April 4, 1985

Thomas J. Opsut
Interim President
Legal Services Corporation
733 - Fifteenth Street, N.W.
Washington, DC 20005

Dear Mr. Opsut:

In preparation for the subcommittee's hearing on April 17, 1985, I would appreciate receipt of information or documents relating to the Legal Services Corporation on or before noon on April 15, 1985. Attached is a list of the relevant materials.

Please send them to the Subcommittee at 2137 Rayburn House Office Building, Staff Room B.

With warm regards,

Sincerely,

ROBERT W. KASTENMEIER
Chairman
Subcommittee on Courts,
Civil Liberties and the
Administration of Justice

Migrants

1. In 1977 in response to a command of the Congress in § 1007(h) of the LSC Act, the LSC did an excellent study of special problems of access to justice of various groups in our society including migrants. On the basis of that study and an estimate of the size of the migrant population, Congress significantly expanded LSC funding for special migrant legal services units. Now, I understand, LSC is backing away from its commitment to fully funded migrant units. In fact, I understand you are contemplating a 21.6% funding cut.

I would like a full and complete written explanation:

A) outlining the impact of the funding cut on migrant programs;

B) telling us why you are backing away from the § 1007(h) study; and

C) describing in detail how you intend to provide legal services to migrants considering their specialized problems, need for outreach, language problems, etc.

MIGRANTS

1. The Legal Services Corporation is committed to providing high quality legal assistance to all persons unable to afford legal counsel, including migrant farmworkers. In fulfilling this obligation, the Corporation has conducted a number of studies of the special problems and needs of various groups for legal services. In fact, the LSC Board of Directors has just undertaken a comprehensive review of every facet of the budget to ensure that our funds are distributed equitably to meet the needs of all segments of our clientele. That review found no reason to doubt the findings of the 1007(h) study that migrants have special problems of access to justice. However, that review did find that a number of assumptions that were made when establishing a migrant funding formula in the 1970s are no longer valid.

The key assumption in the 1978 migrant funding formula was that migrant farmworkers were not counted in the 1970 Decennial Census. The 1970 census was roundly criticized for missing at least 5 million people and according to the Lillisand study of the migrant population "it is not unreasonable to believe that "migrants and their families... were not counted in significant numbers and make up at least 20% of the nation's uncounted."

Because LSC believed that migrants were not counted in the 1970 Census data which was used to fund basic field programs, the Corporation commissioned a study of the migrant farmworker population to provide a basis for funding of migrant units. This study yielded an estimate of 1.5 million migrant farmworkers and dependents which was adjusted to approximately 1 million to account for duplication and double counting. Under the formula adopted, migrant programs received funding based upon the number of migrants estimated within their service area adjusted for the length of the migrants' stay. ~~basis~~ This funding approach has continued to the present.

However, the 1980 Census was much more accurate than the 1970 Census. The Census Bureau believes that its overall error factor has been reduced to approximately 1%. The assumption that migrants are not counted in the census data which is used to fund basic field programs is not valid.

It has been argued that the 1980 Census did not count migrants. However, that is based upon a number of assumptions which fades when closely examined.

The first assumption made is that the Lillisand estimate of 1,000,000 migrants and dependents is correct. The next assumption is that migrants are 50% Hispanic, 30% Black, and 20% White (Lillesand Study p. 76.) Those two assumptions produce 500,000 hispanic migrants, 300,000 black migrants and 200,000 white migrants.

Those who argue that the 1980 Census did not count migrants next state that blacks and hispanics were undercounted at approximately the same rate (5%) in the Census. This rate yields 1.5 million blacks and 730,000 hispanics who were not counted in the 1980 census. If one assumes that no migrants were counted in the 1980 census, then 20% of all uncounted blacks were migrants, but 68.5% of all uncounted hispanics were migrants. This clearly does not make sense. This discrepancy conflicts with the previous assumption that blacks and hispanics were missed at approximately the same rate. [NOTE: This discrepancy becomes even greater if one compares the results with LSC's National Case Service Reports data. These figures which are self reported by the migrant programs show that 79.8% of all migrants cases were for hispanics and only 11% were on behalf of black clients. If these figures reflect the actual ethnic characteristics of the migrant population then there are approximately 800,000 hispanic migrants and only

110,000 black migrants. This would mean that only 7.3% of uncounted blacks were migrants but that 100% of uncounted hispanics were migrants plus at least 70,000 hispanics would have to been counted.]

A final blow to the undercount argument is delivered by a recent Census Bureau's Report, which estimated that over 2 million undocumented aliens were counted in the 1980 Census. Undocumented aliens are not eligible for legal services and by any measure comprise a significant proportion of the migrant farmworker population. Yet, these 2 million aliens are included in the 1980 Census data which is used to fund our basic field programs. Even if no migrants were counted in the 1980 Census, the funding for these 2 million aliens would provide funds for the entire Lillesand migrant population twice over. This is an important point, because in forty-one of forty-three programs, the migrant unit is just one component of a basic field program. If migrants are included in the basic field program poverty count, then these 41 units already receive basic field funding for their migrant units.

The Board's review of migrant funding also found reason to believe that the 1977 Lillesand migrant estimate significatnly overstates the current migrant population. Studies by the

Department of Agriculture and the Department of Health and Human Services produced estimates of 226,000 and 800,000 and show the migrant labor force is declining. The Board has directed the staff to undertake a comprehensive new study of the migrant population to resolve this difficult question. More importantly, the study will reassess the current needs of the migrant farmworkers to determine how to best serve their needs. That study is just beginning, so the Board cannot predict what changes, if any, might be made in the delivery system. However, the Board can assure Congress that no changes in the delivery system will be made until the study has been completed, analyzed and fully discussed with Congress.

4. IF FUNDING IS SHIFTED TO TEXAS, FLORIDA AND CALIFORNIA, HOW WOULD SERVICES BE PROVIDED IN THE GREAT MAJORITY OF "STREAM" STATES WHERE MIGRANTS ACTUALLY WORK AND WHERE MOST FARMWORKERS LITIGATION ACTUALLY ARISES? WOULDN'T SUCH A CHANGE IN FUNDING NECESSARILY CONTEMPLATE THAT THE LAWYERS IN THE BASE STATES WOULD ALSO MIGRATE WITH THE WORKERS?

A: The bulk of the migrants are located in and time spent working by migrants is in those three states. Yet they only receive forty percent of the funding.

(a) DIDN'T LSC PREVIOUSLY CONSIDER AND REJECT THE IDEA OF SENDING LAWYERS FROM "BASE" STATES TO FOLLOW THE MIGRANT STREAM AS IMPRACTICAL BECAUSE OF BAR ADMISSION AND A HOST OF OTHER COMPLEX PROBLEMS?

A: YES.

5. IF YOU GENUINELY BELIEVE THAT MOST MIGRANTS WERE COUNTED BY THE 1980 CENSUS, AND WISH TO KEEP LSC'S PROMISE TO MR. KASTENMEIER TO PRESERVE THE MIGRANT DELIVERY SYSTEM, WHY DON'T YOU "BACKOUT" THE NUMBER OF MIGRANTS PRESUMABLY COUNTED BY THE CENSUS FROM THE OVERALL COUNT OF POOR PEOPLE?

A: We are already funding poor people and I believe that poor migrants should be classified as such only when working away from home. The remainder of the time we should fund them as poor persons to be handled by basic field programs.

a. ACCORDING TO THE §1007(h) STUDY, MIGRANTS REQUIRE SPECIALIZED UNITS WHICH DO OUTREACH, HIRE SPANISH-SPEAKING STAFF, AND WORK EVENING HOURS AS WELL AS MAINTAINING A HIGH DEGREE OF EXPERTISE IN LAWS AFFECTING FARMWORKERS. WOULDN'T "BACKING-OUT" MIGRANTS FROM THE 1980 CENSUS BE A MORE APPROPRIATE MEANS OF PRESERVING THE DELIVERY SYSTEM THAN A 21.6% FUNDING CUT?

A: SEE ABOVE.

b. DIDN'T LSC FOLLOW EXACTLY SUCH A COURSE WHEN IT WAS ALLEGED THAT THE CENSUS COUNTED NATIVE AMERICANS?

A: The qualifying characteristics of Native Americans never change; therefore, it is not the same.

6. DIDN'T LSC DO ITS OWN COUNT OF MIGRANTS IN 1977?

A: YES.

a. WHAT NUMBERS DID THIS STUDY FIND?

A: Please see the attached study.*

b. DO YOU HAVE ANY QUESTION ABOUT THE VALIDITY OF THE METHODOLOGY EMPLOYED IN THAT STUDY? WHAT IS THE BASIS OF SUCH CRITICISMS?

A: Yes, the basis of my questions are the recent studies concluding that the migrants numbers are substantially less.

7. WHAT OTHER NUMBERS HAVE YOU BEEN INFORMED ABOUT? FROM WHAT SOURCES?

a. WHAT DO YOU VIEW AS THE STRENGTHS AND DEFICIENCIES OF EACH COUNT?

b. AS TO EACH OF THE LISTED STUDIES PLEASE INDICATE WHETHER THE STUDY MEASURED:

1. JOBS AS COMPARED TO PEOPLE.
2. TURNOVER RATES OF EMPLOYEES.
3. FAMILY MEMBERS (OR JUST WORKERS OR CHILDREN ONLY).
4. PACKING HOUSE WORKERS?
5. PUERTO RICANS?
6. SEASONAL WORKERS.

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*The study referred to (consisting of 197 pages) was retained in the files of the Committee in the interest of economy and may be researched at any time upon request.

MENDED INSERT FOR

PAGE 13 -- QUESTION 7

MIGRANT FUNDING

Prepared for Thomas Opsut by Donald P. Bogard

February 20, 1983

I.

Introduction

At your request, I have prepared a paper dealing with the overall issue of funding by the Legal Services Corporation for legal assistance to migrants. In order to do so, I have reviewed various documents, including four major studies. Those four are the Lillesand study[1] (Lillesand), the 1007(h) Report[2], The Hired Farm Working Force of 1981[3], and the 1978 Migrant Health Program Target Population Estimates.[4] I have also had numerous discussions with people both within and outside the legal services community, including the Director of the Migrant Legal Action Program; representatives of the United States Department of Agriculture, the Bureau of the Census, the National Food Processors Association, and the American Farm Bureau Federation; and staff of LSC.

In this paper I have attempted to address two points, i.e., the number of migrants in the United States and the general relevance of LSC funding decisions regarding those migrants. I have not conducted a full scale, point-by-point analysis of any of the studies nor have I attempted to critique any of them. The latter decision was rather difficult because some of the papers make statements and conclusions without an adequate factual basis. In addition, some of them are misleading in the use of terms and, in fact, appear purposefully to interchange terms when such action is clearly not warranted. A lack of objectivity is also evident in some of the studies. Nevertheless, the studies have been informative for the preparation of this paper on this complex subject.

Migrant workers reside in many states ("base states"), but Texas, California, and Florida appear to have the greatest number. Nearly 47% of the number of migrants listed by Lillesand come from those three states.[5] See Exhibit 1 attached. They travel from their base states to work in "stream states." Hence, the "migrant stream."

In order to count those migrants, the four studies have employed several methods. As Lillesand said on page 2:

> We had neither time nor resources to do a complete census or even a sample survey in each of the 50 states and Puerto Rico over a twelve-month period. The general approach of the study was to look at existing data, the methodologies used to collect the data, the problems of definitions of the populations studied and other limits of the data, and to determine whether factors for correcting the limits and deficiencies could be developed. Finally, through the use of 600 survey questionnaires and some on-site

> visits, we attempted to measure whether and to what extent the data we were collecting from other sources or generating through the use of our formulas was describing the real numbers of potential legal services farmworker clients....

Lillesand's methodology is discussed at pages 50-53. See Exhibit 2 attached. Basically, four data sources were used in the following order of preference:

> ...(1) a mail and telephone survey of public and private organizations serving migrants in each state; (2) DOL In-Season Farm Labor Reports and 1970 Census factors for household of unrelated individuals and rural poverty family size in each state...; (3) HEW's report on the 1973 Migrant Health Estimated Target Population; and (4) Office of Education data...
>
> In arriving at figures based on DOL data, we (1) estimated the number of migrant farmworkers in each state by multiplying its peak month activity by a turnover factor of 1.25; (2) estimated the number of households represented by a state's peak month activity by dividing the number of workers by a factor of workers per household of 1.4 (USDA) or, in states with a heavily Mexican-American influx, a factor of 2; (3) applied 1970 Census figures for each state to differentiate family households from households of unrelated individuals and derived a figure for non-working, presumably dependent, members of migrant family households in each state; and (4) added the resulting number of dependents to the number of farmworkers calculated in step number (1).
>
> In those states where our survey indicated a predominantly Mexican-American in-migration, a family size of 6.65 with two workers per family was applied to obtain the number of dependents per household...

> Where reports from our survey of the states differed significantly from figures based on DOL data, 1973 Migrant Health figures were used...
>
> Finally, in those states, namely Mississippi, Maine, Nevada and South Dakota, for which DOL had no counts of migrants, we used figures from the HEW Office of Education Migrant Branch on numbers of migrant and settled-out children enrolled in these states' schools as the basis for estimating the total number of children and workers. Settled-out children were included because, although conclusive studies have not been undertaken, there is substantial doubt that the majority of these children maintain their settled-out status.
>
> Neither the DOL-based computations nor the Migrant Health figures were adjusted for duplication since, while some workers may be counted more than once during a state's peak month, the migrants would have the same need for service wherever they travel.
>
> To the figures obtained by these methods we added the number of certified foreign workers employed in each state and the number of food processing workers, based on the estimate of 15 cannery workers for every 100 field workers.

The 1007(h) Report used the Lillesand figures as adjusted to correct for the duplication "...inherent in an estimate of migrant population taken during peak month activity..."[6]

Data for the Hired Farm Working Force report is gathered:

> ...for the USDA's Economic Research Service by the Bureau of the Census, U.S. Department of Commerce. The survey sample of households includes each State and the District of Columbia, but excludes Puerto Rico and other U.S. territories and possessions. In 1981, approximately 58,000

> households were interviewed; 1,332 contained persons who did hired farmwork in 1981. Information obtained from this sample of households was expanded to provide estimates of the total hired farm working force population.

In discussing the problems inherent in data collection regarding migrants, the HHS report states at page 20:

> There is no single data source that accurately and uniformly portrays the population of migrant and seasonal farmworkers and their dependents in the entire United States. The migrant and seasonal farmworker population is a constantly changing, poverty-ridden and evasive one, making documentation, for any purpose, a research nightmare.

See copy of methodology attached as Exhibit 3. That methodology provides for the use of ES-223 reports of the United States Department of Labor's Employment Service, adjusted upward by 20 percent to correct for undercount, and modified to account for dependents based upon ratios developed by HHS's Bureau of Community Health Services in 1975. Adjustments were then made for double counting.

II.

Analysis

The level of funding by the Legal Services Corporation for migrant programs and components has increased greatly since the inception of the Corporation, as has the number of recipients. In 1975, when the Corporation became responsible for the ten migrant programs and components plus the back-up center, funding was over $1 million. Funding for FY 1985 for the two migrant programs and 41 migrant components is set at $9,482,125. In addition, the back-up center known as the Migrant Legal Action Program will receive $572,309 in FY 1985. See chart attached as Exhibit 4 entitled "Migrant Programs and Components Annualized Funding Levels."

As is evident from a review of Exhibit 4, funding for migrant programs has not increased at a constant rate. One of the important points to note, however, is that in FY 1982, when all other LSC-funded programs received a 25% cut in funds, migrant programs and components along with Native American programs suffered only a 12 1/2% cut. A second important point relates to the percentage which migrant funding makes up of total LSC funding. Prior to FY 1984, the highest level of funding for migrant programs and components was the $8,543,018 in FY 1981. In that year, total Corporation funding was $321,000,000, and the amount allocated for migrants constituted 2.66% of the total. The next year, with the 12 1/2% cut in migrant funding and the 25% reduction in total LSC funding, the percentage was 3.11%. With the funding restrictions placed on the Corporation in the Continuing Resolutions and the Appropriations bills, that percentage has remained constant at that level through FY 1985.

While it is easy to determine the amount of funding LSC obligates for legal services for migrants, it is very difficult to ascertain the number of migrants which are eligible for those services from LSC recipients. In 1977, the Corporation sponsored Lillesand study was undertaken to obtain a count of migrants for program funding purposes. According to LSC's Section 1007(h) Report, the Lillesand study:

> ...was made for two reasons. First, the funding decisions made by OEO and continued by LSC were not based on numbers of migrants in a service area. Second, it was assumed that migrant farmworkers were severely undercounted in the 1970 census and the Corporation could not, therefore, use the census as a basis for allocation of funds to service migrants....[8]

There are many definitions of the term "migrant." Lillesand states that:

> [a] "migrant agricultural worker" is a person who left home temporarily overnight to do hired field or food processing work with the expectation of eventually returning home.[9]

The United States Department of Agriculture has a different definition:

> Migratory workers are those who 1) left their home temporarily overnight to do hired farmwork in a different county within the same State or in a different State with the expectation of eventually returning home, or 2) had no usual place of residence, and did hired farmwork in two or more counties during the year....[10]

At the time of the Lillesand study, the Department of Health, Education and Welfare, Migrant Health Program used a statutory definition:

> A migratory agricultural worker is an individual whose principal employment is in agriculture on a seasonal basis and who has been so employed within the last 24 months, and who establishes for purposes of pursuing such employment a temporary abode.[11]

Quite often in discussing hired farmworkers, the terms "migrant" and "seasonal" are combined. In fact, the Farm Labor Contractor Registration Act, 7 U.S.C. § 2041, et seq., which was passed by Congress in 1963 to regulate crew leaders who recruit or transport migrants, was replaced in 1982 by the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1801, et seq. However, LSC funding has properly been directed only toward migrants. As Lillesand said on page 3:

> ...By our definition, a seasonal farmworker is a person who never leaves his home overnight to do farm work. Therefore, unlike migrants, a seasonal farmworker would theoretically be counted as an individual in the 1970 census. Thus seasonals are already included in the LSC funding formula...

> Seasonals who reside full time in their permanent residence suffer the same problems of securing access to legal services programs as do other rural poor....

See also the 1007(h) Report, page 164.

Based upon a variety of data, Lillesand estimated that there were 1,558,175 migrant farmworkers and dependents.[12] That figure was "revised" in the 1007(h) report to 996,175 migrants:

> [b]ecause the original "Lillesand" count did not adjust for duplication inherent in an estimate of migrant population taken during peak month activity...
>
> As a result of the adjusted Lillesand count, funding for existing migrant programs was upgraded toward the $7 per poor person service level...weighted to reflect the time migrants spent in the state....[13]

In the April, 1980 study entitled 1978 Migrant Health Program Target Population Estimates, using the definition of "migrant" cited above, HHS estimated that there were 800,000 migrant farmworkers and dependents. There was no indication of what that estimate included, i.e., no breakdown of the number of farmworkers and the number of dependents. Likewise, there was no statement regarding the number of migrants which had been involved in hired farmwork in the past 12 months as opposed to the past 24.

At the same time that Lillesand was estimating over 1 1/2 million migrants and dependents and HHS was estimating 800,000, the United States Department of Agriculture was concluding that there were approximately 200,000 migrant farmworkers.[14] That figure includes migrants over the age of 14 years. Therefore, it would include husband, wife, and all children over 14 in that same family who are performing hired farmwork. Quite often, both parents and older children are so employed as was acknowledged at page 21 of the HHS report. The U.S.D.A. figure does not include children under the age of 14, and, thus, it is difficult to determine the total number of migrant farmworkers and dependents using only those figures.

As noted at page 17 of the Lillesand study, and as I confirmed with the U.S.D.A., the figure of 200,000 migrant farmworkers does not include migrants involved in food processing or canning unless that work is done on the farm. In discussions with representatives of the National Food Processors Association, I was advised that NFPA does not have any estimates of the number of migrants involved in food processing and canning. On pages 19-20, Lillesand discusses this problem as follows:

> ...Fifth, the USDA definition excludes migrants employed in seasonal food processing, a task performed by as many as

> 40% to 50% of the migrants in some states and probably 15% of the migrants in the nation.

There is no detailed basis stated for the 15% conclusion, and, therefore, no way to assess its accuracy. However, it is clear that there are migrants involved in food processing who are not included in the U.S.D.A.'s figure of 200,000 and, thus, that figure, if accurate at all, should be higher. The amount of the increase would, however, be pure speculation. Some migrants might perform field work for one grower and then work in a cannery, thereby not necessitating an increase to the migrant farmworker total. On the other hand, some migrants are recruited only for cannery work and, therefore, would not be counted in the field worker totals.

Recent estimates of migrant farmworkers and dependents given to the Corporation by the Migrant Legal Action Program (MLAP) total 1,520,575, and are very close to the Lillesand figures. See chart attached as Exhibit 5. In fact, a comparison of the MLAP figures with the Lillesand figures in Exhibit 1 shows that most are identical. Therefore, I believe that the MLAP figures should be discounted, certainly as to trends because the Lillesand data were accumulated in 1977, and probably as to accuracy since Lillesand was later adjusted downward by over 500,000 persons. In addition, those figures do not take into consideration the 1007(h) Report's comments at page 131 regarding the effects since 1977 of mechanization and use of chemicals in the displacement of the migratory farm labor system.

There are, however, very clear trends detailed by the U.S.D.A. in The Hired Farm Working Force of 1981. Table 2 of that Report shows that in 1960, U.S.D.A. estimated 409,000 migrant farmworkers and that since that date the number has steadily declined. See copy of Table attached as Exhibit 5. The 1981 figure of 115,000 is probably not accurate. It is clearly lower than ever before and should be considered an aberration. In fact, I contacted the U.S.D.A. and was advised that the 1983 report, which is to be released in October, 1985, will estimate 226,000 migrant farmworkers. That number would appear to be more consistent with the previous nine surveys. Nevertheless, the total number has been reduced by approximately 50% since 1960.

In a 1978 report entitled Food Stamp Participation of Hired Farm Worker Families,[15] the U.S.D.A. estimated that the average family size, based upon 1975 data, was 3.69 persons.[16] Lillesand also speaks to family size for farmworkers. On page 36, the study discusses the Migrant Student Record Transfer System (MSRTS) formula "which arbitrarily computes two adults (parents) per 1.5 children."

without identifying sources, Lillesand makes two other general comments on family size. On page 52, it states that for predominantly Mexican-American migrants "a family size of 6.65 with two workers per family was applied to obtain the number of dependents per household." In discussing seasonal farmworkers on page 55, Lillesand cites a family size of 4.6 which includes 1.3 workers per family. Thus, the family size estimates I have seen are 3.5, 3.69, 4.6, and 6.65. Applying the first three figures as adjusted for workers to the 1983 U.S.D.A. migrant farmworker total of 226,000 results in a total migrant population of 339,000; 381,940, or 745,800. These figures may be high, however, since the U.S.D.A. figures count all farmworkers over the age of 14 but the family size adjustments only delete adults from the multiplier. Therefore, there is some duplication in the count which is further increased by the effect of the multiplication. It is not possible to utilize the "predominantly Mexican-American" figure of 6.65 because the figures of the U.S.D.A., "the only federal agency systematically attempting an ethnic breakdown of migrant farmworkers,"[17] show that people of "Spanish origin" make up 24% of the total migrant population.[18] Using the 6.65 figure would be unduly high for the other 76% of the population.

As stated above, one of the reasons for the *Lillesand* study was the assumption that migrants were severely undercounted in the 1970 census. *Lillesand* discusses this matter as follows:

> Because the census was taken in April, it failed to enumerate all persons involved in agricultural labor. Questions 33-35...asked for the person's "job activity or business last week, if any." Farmworkers, whether seasonal or migrant, who were either recently unemployed from another non-farm job or, currently employed in non-agricultural work would not be classified as involved in agricultural production...
>
> Secondly, the census does not distinguish migrant and seasonal farmworkers from others involved in agricultural production...Thus we cannot compare the results of the decennial census with other data sources to attempt to measure the extent of under-reporting farmworkers, migrants in particular.
>
> The third problem is the most serious, for it involves not only misclassifying migrants by occupation, but also failing to include them in the census count at all. The problem of counting migrants lies rooted in their transiency and the Census Bureau's failure to identify and devise operational procedures which would remedy the problem for this specific group of people...
>
> The Bureau of the Census estimated that it failed to count some 5 million people in 1970. It has also been recognized that those not counted have traditionally been poor, adult, male, young and nonwhite, primarily the group involved in migrant farmwork. Adding transients to the list, it is not unreasonable to believe that migrants and their families...are not counted in significant numbers and make up at least 20% of the nation's uncounted.[19]

If 20% of the uncounted 5 million were migrants, that would mean that 1 million migrants were uncounted. However, the adjusted Lillesand total for migrants was nearly that same amount. Therefore, Lillesand is apparently stating that none of the migrants were actually counted in the 1970 census, despite Census Bureau assertions to the contrary. Unfortunately, there is no way to break out the migrant count in the census for 1970, nor is there any way to break out the count for 1980. Nevertheless, the Census Bureau continues to assert that migrants were counted for 1980, and if they were counted in the census, those which are eligible clients of LSC's recipients are already funded by the basic field grants.

Further, there is some evidence that field programs have been servicing migrants. At pages 169-170 of the 1007(h) Report, there is a discussion of a questionnaire sent to field programs which included questions on service to migrant and seasonal farmworkers. The results of that questionnaire were as follows:

> ...Of the 193 field program questionnaires returned, approximately 90 included descriptions of service to migrants. However, most programs do not keep information that identifies migrant or seasonal farmworkers. For example, only 15 programs can determine the number of open cases in which the client is a migrant or seasonal farmworker. Only 10 can estimate the number of cases opened during the year, and the categories within which those cases fall.

> Currently, 26 migrant programs or components receive special "earmarked" funds to serve migrants....(Emphasis supplied.)

Thus, 46.6% of those programs which returned the questionnaires stated that they provided services to migrants, and those 90 programs were more than three times the number of recipients receiving specific funding for migrant services at that time.

In addition, the Lillesand study and the 1007(h) Report were both completed prior to the time in which the Corporation funded the recipients necessary to attain complete geographical coverage of the United States in 1981 and 1982. Thus, as of 1982, all areas of the country (with the sole exception of St. Charles Parish, Louisiana) were served by legal services programs and all residents of the United States, including migrants, had access to those programs. It is likely that the number of programs now serving migrants is even higher than the 90 noted above. Regardless of where a migrant might be, either at home or on the road, there is a legal services program funded to serve that area, and if migrants were counted in the 1980 census, that program has been funded to handle that migrant's legal problems.

Migrant programs and components have traditionally believed that they were needed to assist migrants with their legal needs because of special problems of access. At pages

167-169, the 1007(h) Report lists "several possible barriers to farmworkers' access to legal services":

1. Physical barriers. "Because migrants reside in labor camps, the location of those camps, and the possible lack of available transportation, migrants might be unable to reach legal services offices."
2. Unawareness of Legal Services.
3. Language barriers.
4. Ethnic cultural barriers.
5. Unwillingness to use Legal Services.
6. Special legal problems. "The status-related legal problems of migrants may require access to delivery systems which specialize on farmworker and other status-related problems."
7. Service to migrants.

Lillesand briefly discusses the "surprising agreement from a wide variety of sources" on:

> ...the elements essential to effective delivery: outreach, bilingual/bicultural staff, coordination with farmworker groups and agencies, and supplementary staff during the season. Most legal services programs with experience serving farmworkers indicated that they would use additional funds to increase outreach activities either through additional paralegal positions, satellite offices, or mobile vans. Both legal services programs and farmworker groups strongly opposed Judicare or private bar involvement in delivering services to farmworkers in small rural towns where there

> were few lawyers and where growers represented a large part of the private bar's business....[20]

With these elements in mind, it thus becomes informative to examine the data in the Case Services Reports submitted by the recipients to LSC regarding closed cases. Although the Office of Information Management has been unable manually to compile closed case figures for previous years, it has compiled 1984 data for migrants. In addition, I have discovered limited 1980 data which had previously been compiled in an undated internal LSC memorandum, and have received 1981 data on closed cases from the Migrant Legal Action Program.

In 1981, migrant cases closed by LSC recipients totaled 11,907. The annualized funding level for migrant programs and components in 1981 was $8,543,018, and, therefore, the cost per case was approximately $717. During 1984, the number of closed cases increased to 13,670 on annualized funding of $8,549,382, or $625 per case. Using the same procedure, in FY 1981, the national cost per case was approximately $263. The cost for FY 1984 cannot be ascertained until OIM completes the CSR data.

The breakdown of the reasons for closure of migrant cases is also interesting. The following chart compares the reasons for closure of migrant cases and all cases for the years 1980 and 1981.

	1980		1981	
	National	Migrant	National	Migrant
Advice	32.3%	33.0%	31.7%	24.9%
Brief service	13.6%	24.0%	14.4%	28.3%
Referred after legal assessment	8.1%	9.6%	7.7%	7.9%
Insufficient merit to proceed	3.0%	3.2%	3.0%	4.0%
Client withdrew	11.0%	8.3%	11.4%	12.3%
Change in eligibility	0.8%	0.3%	0.9%	0.2%
Negotiated settlement without litigation	6.8%	10.0%	6.6%	9.4%
Negotiated settlement with litigation	3.7%	1.7%	4.1%	2.5%
Court decision	11.6%	2.0%	10.9%	2.7%
Administrative agency decision	5.5%	4.1%	5.8%	5.0%
Other	3.6%	3.4%	3.6%	2.8%

Also included are migrant cases for 1984, but there are as yet no national totals for 1984:

	1984
	Migrant
Advice	26.10%
Brief service	25.42%
Referred after legal assessment	7.23%
Insufficient merit to proceed	3.17%
Client withdrew	10.48%
Change in eligibility	0.18%
Negotiated settlement without litigation	5.83%
Negotiated settlement with litigation	7.36%
Court decision	2.11%
Administrative agency decision	5.41%
Other	6.72%

The above data show that litigation was only involved in 3.7% of the migrant cases in 1980, 5.2% in 1981, and 9.47% in 1984. On the other hand, brief services or less were involved in 81.3% in 1980, 80.4% in 1981, and 79.3% in 1984. In 1980 and 1981, the national averages for all cases were 15.3% and 15.0% respectively for litigation and 72.4% and 72.6% for brief services.

Clearly, the labor intensive cases requiring litigation are not a high priority with migrants. Based upon a total of the first three categories listed on the above chart, the major needs appear to be advice and referral to other service entities.

III

Conclusion

The figures discussed above regarding the number of migrant farmworkers and dependents vary widely from the U.S.D.A.'s 226,000 migrant farmworkers over age 14 to the adjusted *Lillesand* study's 996,176 migrant farmworkers and dependents. All of the studies I have examined agree that a precise count is impossible. The "correct" figure is probably somewhere between those extremes, and closer to the lower end because:

> ...Migrant workers were very similar to the rest of the hired farm working force in that both were made up predominantly of young males who spent only a small portion of their time at farmwork....[21]

Lillesand agrees with that assessment as discussed at page 14, supra. Further, the HHS figure of 800,000 includes those who have been engaged in migratory farmwork for the past 24 months, not 12 months.

At this time, the Corporation is funding two migrant programs and 41 migrant components based upon the adjusted Lillesand figures. The per capita average for those programs according to OFS's Grants and Budget Unit is approximately $9.74, whereas the national per capita average for basic field programs is $8.43.

The number of cases closed in 1980 and 1981 for the amount of money granted results in a very high per case cost, and the case closure mix is very low on the labor intensive cases, i.e., litigated cases.

Since the Lillesand figures were developed, LSC has attained nationwide geographic coverage for basic field programs. In addition, the Bureau of the Census has attempted to count migrants and dependents in the 1980 Decennial Census. Thus, migrants and dependents should be included in the basic field grants which are based upon the 1980 census. Due to nationwide geographic coverage, migrants should not have much more difficulty reaching an LSC-funded legal services program than do the rural poor across the country.

There may, however, be language barriers for the 24% of the migratory population which U.S.D.A. found to be Hispanic, and programs not serving a basically Hispanic population may incur greater expenses to retain bilingual staff for the period of the migrant season.

Based upon all of the above, I believe that the amount of funding specifically allocated to migrant programs and components could be substantially reduced, and do not believe that the proposed 21.6% reduction is excessive.

Notes

1. Lillesand, David, *et al.*, An Estimate of the Number of Migrant and Seasonal Farmworkers in the United States and the Commonwealth of Puerto Rico; Report prepared for the Legal Services Corporation, May, 1977.

2. Special Legal Problems and Problems of Access to Legal Services, [illegible] A Report to Congress as required by Section [illegible] of the Legal Services Corporation Act of 1974.

3. [illegible] Farm Working Force [illegible] Agriculture, Economic Research Service, Agricultural Economic Report Number [illegible], [illegible].

4. [illegible] Migrant Health Program Target Population Estimates; [illegible] Department of Health and Human Services, April, 1980.

5. Lillesand, pp.92-94.

6. 1007(h) Report, p. 156.

7. Pollack, p. 4.

8. 1007(h) Report, p. 155.

9. Lillesand, p. 5.

10. Pollack, p. 58.

11. Lillesand, p. 48; Public Law 94-63.

12. *Id.*, pp. 57-59.

13. 1007(h) Report, p. 156.

14. Pollack, p. 3. The estimates for 1973 through 1977 were 203,000; 209,000; 188,000; 213,000; and 191,000 respectively.

15. Food Stamp Participation of Hired Farm Worker Families; United States Department of Agriculture; Economics, Statistics and Cooperatives Services; Agricultural Economic Report Number 403; April, 1978.

16. This figure might appear low because many migrant families are large, but it is based upon data which includes one person "families," *i.e.*, single migrants in the work stream.

17. *Lillesand*, p. 75.

18. *Id*.

19. *Lillesand*, pp. 8-9.

20. *Id*., p. 4.

21. Pollack, p. 17.

RANKING OF STATES FROM LARGEST TO SMALLEST MIGRANT POPULATION, AND FUNDING LEVELS AT $4.90 AND $7.00 PER MIGRANT

	No. of Migrants	Funding at $4.90	Funding at $7.00	Current OEO Migrant P
1. Tex.	318,225	$1,559,300	$ 2,227,575	$ 125,000
2. Calif.	244,949	1,200,250	1,714,643	
3. Fla.	166,964	818,123	1,168,748	80,000
4. Mich.	77,664	380,553	543,648	116,500
5. Wash.	70,743	346,640	494,848	
6. Ohio	48,806	239,149	341,642	33,250
7. P.R.	46,835	229,491	327,845	291,250
8. Minn.	43,457	212,939	304,199	
9. Ill.	41,826	204,947	292,782	95,500
10. Ore.	41,431	203,012	290,017	
11. N.C.	40,250	197,225	281,750	
12. N.Y.	32,200	157,780	225,400	87,375
13. Ga.	31,558	154,634	220,906	
14. Colo.	30,714	150,635	215,194	81,550
15. Ida.	25,134	123,156	175,938	
16. S.C.	21,545	105,570	150,815	34,950
17. Ind.	20,449	100,200	143,143	
18. Miss.	20,078	98,382	140,546	
19. N.J.	19,227	94,212	134,589	
20. Wisc.	19,115	93,913	134,162	58,050
21. Ariz.	17,714	86,798	123,998	123,490

22. Mont	17,250	84,525	120,750	
23. Me.	16,311	79,923	114,177	
24. N.D.	14,194	69,550	99,358	
25. Okla.	13,550	66,395	94,850	
26. Va.	12,455	61,029	87,185	
27. La.	10,332	50,626	72,324	
28. Del.	9,379	45,957	65,653	
29. Wyo.	9,132	44,746	63,924	
30. Kan.	8,924	43,727	62,398	
31. Pa.	8,714	42,698	60,998	
32. Md.	7,871	38,567	55,097	
33. N.M.	7,715	37,803	54,005	
34. Utah	7,076	34,672	49,532	
35. Ark.	6,066	29,723	42,462	
36. Conn.	4,031	29,551	42,217	58,250
37. Neo.	5,579	27,337	39,053	
38. Ala.	4,813	23,583	33,691	
39. Mass.	3,677	18,017	25,739	
40. Iowa	2,435	11,931	17,045	
41. Miss.	2,048	10,035	14,336	
42. W.Va.	1,679	8,227	11,753	
43. Tenn.	1,435	7,031	10,045	
44. Ky.	618	3,028	4,326	
45. Nev.	616	3,018	4,312	

46. N.H.	524	2,567	3,668	
47. Vt.	433	3,121	3,551	
48. S.D.	185	906	1,295	
49. R.I.	171	837	1,197	
50. Ha.	0	0	0	
51. Alas.	0	0	0	
TOTALS	1,898,174	87,835,061	$10,907,202	$1,010,093

through arrangements unrecognized by the ES, or that they are involved in agricultural labor. These ambiguities, most apparent when attempting to pinpoint demographic developments at the local level, emphasize the necessity for a comprehensive study of the fluctuating and elusive aspects of migrant and seasonal agricultural labor.

Farmworker Legal Services Study Project. The definitions which we used in this study were:

> A seasonal agricultural laborer is a person who has been employed less than 250 days in field or food processing work and who is not a migrant agricultural worker.
>
> A migrant agricultural worker is a person who left home temporarily to do hired field or food processing work with the expectation of eventually returning home.

Farmworker Legal Services Study

Methodology. Because no one single data source yielded realistic results across the country, the Farmworker Study Project used four sources of data on numbers of migrants in individual states: (1) a mail and telephone survey of public and private organizations serving migrants in each state; (2) DOL In-Season Farm Labor Reports and 1970 Census factors for household of unrelated individuals and rural poverty family size in each state in a formula described below; (3) HEW's report on the 1973 Migrant Health Estimated Target Population; and (4) Office of Education data, primarily from the Migrant Student Record Transfer System. In general, this was the order of preferred use, e.g., Office of Education data was used only where none was available from the other sources. However, there were exceptions, as in the grain state of Kansas. Here, the Migrant Health 1973 figure was much lower than that calculated from Census and 1976 DOL data, but was selected because it is assumed that the relatively affluent grain harvesters are not represented by Census rural poverty family size factors, and that the Migrant Health Programs were more in touch with the population of concern to the LSC. Sources for each state's estimate are indicated on the Tables.

In arriving at figures based on DOL data, we (1) estimated the number of migrant farmworkers in each state by multiplying its peak month activity by a turnover factor of 1.25; (2) estimated the number of households represented by a state's peak month activity by dividing the number of workers by a factor of workers per household of 1.4 (USDA) or, in states with a heavily Mexican-American influx, a factor of 2; (3) applied 1970 Census figures for each state to differentiate family households from households of unrelated individuals and derived a figure for non-working, presumably dependent, members of migrant family households in each state; and (4) added the resulting number of dependents to the number of farmworkers calculated in step number (1).

In those states where our survey indicated a predominantly Mexican-American in-migration, a family size of 6.65 with two workers per family was applied to obtain the number of dependents per household. These factors were an average of those indicated by various studies (64, 92, 184) and were supported by respondents to our survey, whose estimates yielded an average family size of more than 6 for 50% of migrants, and, among this percentage a family size of 7 or more for 31% of all migrants. The states which revealed a predominantly Mexican-American influx were Washington, Oregon, California, Texas, Arizona, Michigan, Indiana, Minnesota, Utah, New Mexico, Idaho, Wyoming, Colorado, Ohio, Wisconsin, Illinois, Montana, North Dakota, Florida.

Where reports from our survey of the states differed significantly from figures based on DOL data, 1973 Migrant Health figures were used. For example, the DOL-Census data yielded an estimate of more than 18,000 in South Carolina, as opposed to Migrant Health's 9,875. The East Coast Migrant Health Project provided current figures for Edgefield and Charleston Counties which corresponded closely to those of the 1973 study, and as these counties are primary migrant users, we concluded that the actual numbers had not changed greatly since the Migrant Health Study was conducted.

Finally, in those states, namely Mississippi, Maine, Nevada and South Dakota, for which DOL had no counts of migrants, we used figures from the HEW Office of Education Migrant Branch on numbers of migrant and settled-out children enrolled in these states' schools as the basis for estimating the total number of children and workers. Settled-out children were included because, although conclusive studies have not been undertaken, there is substantial doubt that the majority of these children maintain their settled-out status.

Neither the DOL-based computations nor the Migrant Health figures were adjusted for duplication since, while some workers may be counted more than once during a state's peak month, the migrants would have the same need for service wherever they travel.

To the figures obtained by these methods we added the number of certified foreign workers employed in each state and the number of food processing workers, based on the estimate of 15 cannery workers for every 100 field workers.

Seasonal Farmworkers. Most of the problems (turnover, definition, visibility) which affect the count of migrants plague the count of seasonal farmworkers. Here are some of the variety of assessments (bear in mind the differences in definitions of seasonal farmworkers discussed above):

C. METHODOLOGY

1. Data Source

There is no single data source that accurately and uniformly portrays the population of migrant and seasonal farmworkers and their dependents in the entire United States. The migrant and seasonal farmworker population is a constantly changing, poverty-ridden and evasive one, making documentation, for any purpose, a research nightmare.

[redacted] however, a data base that expresses uniformity of collection and estimation, as well as a minimum of institutional or other bias, is desirable. [redacted] The ES-223 is the only source routinely collecting local and statewide data on the hired farmwork force, migrant and nonmigrant, throughout the nation, every month of the year.

These reports, listing number of workers employed in various aspects of agricultural work, are collected monthly by each state employment agency, either by each "Crop Reporting Area" (CRA), or by county, in the state. A CRA is an area encompassing a large agricultural region, usually comprising several counties although it may not be coterminous with county boundaries. Although state agencies differ in their collecting, estimating and reporting methods, the format of the ES-223 report is uniform and the collection period (the 15th of each month) is strictly enforced. Uniform guidelines for gathering ES-223 data (including criteria for determining migrant or seasonal status) have been published by the DOL and disseminated throughout the Employment Service system, giving strong impetus towards uniformity in collecting methods.

In addition, the ES-223 reports, showing number of workers for each month of the year, provide easily distinguishable peak month and peak season data, which, in the case of migrants, is valuable in determining adjustments and comparisons based on such factors as inter-state/intra-state migration and labor turnover during a growing season.

There are, however, serious limitations to the ES-223 reports and, in several cases, other data had to be found. Some drawbacks to ES-223 data are:

1) The data are essentially work-load estimates accumulated to meet the needs of the employment service. They record actual employment as of a given date, estimates which are often based on crop acreage, growers' requirements for hired farm labor, and experience from previous years. The discretion of county-level manpower service agents in estimating this data, as well as of growers in providing it, is known to be great. In addition, it does not incorporate family size or unemployment data, important in estimating total population size.

2) Data are for the 15th of the month. This is not necessarily the date of peak employment. In some areas, the peak may come and go between the 15th of one month and that of the next, thus risking an undercount.

3) Department of Labor estimates do not allow for the fact that some persons are very casually attached to the hired farmwork force -- e.g., students on vacation. When these persons are included in the counts, they erroneously inflate the figure being used as guidelines for the "population in need" for service programs. This study has sought to identify such workers and exclude them from the counts presented.

4) No attempt is made to identify working dependents in the counts. It is impossible to ascertain whether family members who assist in the field are counted or not, although this is common in migrant and seasonal farmwork.

5) In some cases the DOL national and statewide data is standardized and formatted to the point that it does not accurately portray the migrant/seasonal farmworker population to any degree. Often, local sources (such as state migrant housing authorities, state departments of labor, migrant health projects, or other established "migrant affairs" offices) give a much more detailed review, and offer the advantage of being more closely involved with the migrant population. In other cases, such alternate data simply does not exist.

6) In many areas, ES-223 data is collected by what is known as a Crop Reporting Area (CRA), an area encompassing a large agricultural region, usually comprising several counties although it may not be coterminous with county boundaries. For the purposes of this report, CRA data was disaggregated into county estimates by contacting state Rural Manpower offices to determine the appropriate county estimates, or by applying proportional equations available in other studies to determine each county's share of the CRA total estimate based on known farmworker population estimates for one or more of the counties therein, anecdotal evidence as to relative density, or size/acreage proportions.

In this report, the ES-223 data of the Department of Labor is used as the primary data base, upon which adjustments and estimations are applied to establish a migrant/seasonal population count that includes dependents and accounts for numerous variables in the population data. Where the ES-223 data was determined to be unusable or unavailable, other sources were sought out, and the resulting data were adjusted to be as compatible as possible with ES-223 data. data. Thus, for example, data obtained from state departments of labor, migrant health projects, or other sources are adjusted to account for definitional variances and data reporting differences.

All sources of data other than DOL ES-223 reports are acknowledged in the "Notes" section of each state's data in the overall table in the Appendix of this report. The need for use of alternate sources, where presented, was generally due to one of two reasons: 1) The ES-223 data for that state or substate area was found to be very inaccurate, based on consultation with other sources, or lacking in substantial detail compared to the alternate source; or 2) The alternate source provided a more direct and/or more recent focus on the migrant/seasonal population than did the DOL (e.g., the Governor's Office for Migrant Affairs in Texas or the New York State Department of Labor reports) and thus, holding methodology equal, would plausibly seem to present more accurate data. A mailing to all DHEW Regional Migrant Health Program Officers and the Employment Service Monitor-Advocate in each state early in the project helped identify comparative data and/or alternate sources.

In all cases, and especially where the migrant and seasonal farmworker populations were the highest according to the DOL, the data were compared with other data sources to affirm their validity and to approximate their reflection of the true populations. Furthermore, in counties and states which showed large shifts in population or which changed impact status since the 1975 BCHS report, an effort was made to reconfirm the population estimates by contacting local sources, and by comparing our data with the results of previous studies which utilized other data sources.

2. Adjustments to DOL ES-223 Data

The first priority in assessing the ES-223 data with regard to the needs of this report, was to determine the level of accuracy of the reports insofar as a complete accounting of all migrant and seasonal farmworkers within the reporting area was concerned. By verification from other sources, several inadequacies, or inherent statistical fallacies became apparent:

1) Unemployment on the date of the report (15th of each month) due to an oversupply of labor, or, in the case of migrants, being enroute from one workplace to the next, is not accounted for in ES-223 reports.

2) Non-reporting or under-reporting by growers due to a desire not to disclose employment of farmworkers is not addressed; under-reporting bias, when methods other than grower surveys are used, is not known.

3) There is up to a 25 percent probability that the reported data does not represent the peak employment for the month. This estimate is based on estimating three weeks as the length of "peak" work -- an average length of stay for migrants who travel from area to area based on the rotating demand for labor at harvest time -- and noting that the 15th may fall outside of this period.

[redacted] It should be noted that, considering the effects of the points above when added together, this was a conservative multiplier.

[redacted]

[redacted]

2) "Seasonal" farmworker populations reported by the DOL were adjusted according to these steps:

a) Unattached seasonal workers were separated from each count according to formulas derived from U.S. Bureau of Census statistics for unattached farmworkers living below the poverty level. These formulas differ according to each state and, so, were independently applied to each state's "seasonal" count.

b) Ratios developed by BCHS in 1975, for persons in each family per "seasonal" worker, were applied to the data after unattached workers were factored out.

c) The number of unattached individuals was added to the total for workers and dependents in families, to obtain total population counts. The adjusted totals, by county, can thus be viewed as a derived approximation of the county population of migrant and seasonal farmworkers plus dependents and household members (including a 20 percent margin for unemployment, under-reporting, etc.) resident within that county on the peak reporting date of the growing season during 1978.

Error can occur in double-counting migrant workers who move among different areas within a state (intra-state migration) and in undercounting local seasonal workers who move from farmwork to other jobs, or work only part of the growing season (labor turnover). In sampling several states for estimated intra-state migration and labor turnover, the need for a tailored, appropriate adjustment for this probability of error was ascertained. Adjustments for double-counting due to intra-state migration or labor turnover during the season were made at the state level and are represented by the "Adjusted State Totals" in the overall table in the Appendix. (Further inter-state migration correction factors are incorporated into the regional and national estimates developed.)

A constant multiplier to adjust state totals for intra-state migration and labor turnover of 25 percent between the unadjusted state totals and the adjusted totals was obtained. Thus, all state totals known to be affected by intra-state migration and labor turnover were adjusted by 25 percent. The migrant category for each state total was multiplied by 0.75 to account for intra-state migration, and the seasonal category was multiplied by 1.25 to account for labor turnover during the season. (Some states were exempt from one or both of these adjustments because of a lack of evidence of intra-state migration, inclusion of the correction factor in the data obtained, or a reliable indication of single counting obtained during a relatively short migrant work season -- for example, Maine had a one-month season in total.)

Regional estimates sum state totals, then adjust for inter-state migration among migrant farmworkers. Knowledge of the migrant streams through each region was used in estimating intra-regional mobility. Thus, in Tables No. 6 and 7, the migrant farmworker population estimate is presented as an aggregation of adjusted state totals (adjusted for intra-state migration and labor turnover only) and as an adjusted regional total (reflecting inter-state migration within the region). Table No. 6 lists each reporting state by Region and shows the migrant seasonal, and total farmworker population for each state and region adjusted for intra-state migration and labor turnover. The "Adjusted Regional Total" then shows each region's aggregate migrant (adjusted for intra-region mobility) seasonal, and adjusted total for migrant and seasonal farmworkers. Table 7, identifies the Standard Federal Regions and sums the adjusted regional totals for each category to obtain adjusted national totals. Since each region's migration patterns differ, separate multipliers were used across regions (averaging 12.6 percent).

The following adjustments were made to each region's aggregate total of migrant farmworkers to correct for inter-state migration within the region: Region I = 33%, Region II = 11%, Region III = 8%, Region IV = 10%, Region V = 10%, Region VI = 23%, Region VII = 5%, Region VIII = 11%, Region IX = 5%, Region X = 10%. Seasonal totals, adjusted for labor turnover, were rounded to the nearest thousand.

Inter-regional mobility, then, was considered in aggregating the regional totals to obtain national totals. It was felt that use of regional totals would simplify and clarify the correction for inter-state migration, versus a national factor applied to all individual county or state totals to obtain a national total, as using analysis by Regions permits finer adjustments for mobility. Inter-regional mobility, in addition, is easier to estimate, as for the most part it refers solely to the basic upstream-downstream movement of migrant workers, which patterns are well known. A five percent figure was used.

3. Definitional Variability

A basic discrepancy exists in the framework for defining the migrant farmworker population among several government agencies which deal with migrant/seasonal farmworkers. Relative to this study, an inherent definitional variance exists between the Employment Service requirement for migrant farmworker status:

> "A seasonal farmworker who performs or has performed during the preceding twelve months agricultural labor which requires travel such that the worker is unable to return to his/her domicile within the same day." [1]

and the definitions set forth by the Department of Health, Education, and Welfare, Migrant Health Program for migrant farmworker status:

> "One whose principal employment is in agriculture on a seasonal basis who has been so employed within the last twenty-four months, and who established for the purpose of such employment a temporary abode." [2]

Obviously, the time periods during which a worker may be engaged in seasonal agricultural labor, twelve months (USES), and twenty-four months (DHEW), create a definitional discrepancy in using one agency's data source to determine the requirements of the other agency. Also, the requirement for establishing a "temporary abode" as determined by DHEW differs in definition, if not in practice, from the DOL requirement that the worker be "unable to return to his/her domicile within one day."

In collecting and reviewing the data on migrant/seasonal farmworkers from all sources, nationwide, it was determined that these definitional discrepancies (USDA and DHEW, Title I ESEA also offered differing definitions of "migrant" farmworkers), while offering a significant obstacle to statistical enumeration in abstract terms, constitute an issue of little relevance to the estimation of the migrant farmworker population in practice, although they may be of real importance in the funding of services. This determination was confirmed by various data collectors who deal with migrant/seasonal farmworkers. In practice, essentially disregarding definitional limits in evaluating "migrant" status for the farmworkers they are responsible for, these agents rely on accepted indices such as self-reported migrant status or membership in a registered, inter-state migrant crew.

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[1] Source: DOL/Employment & Training Administration, Migrant & Seasonal Farmworkers Rules & Regulations, Jan. 1977.

[2] U.S. Dept. of Health, Education, and Welfare, Migrant Health Program, Bureau of Community Health Services, 1973 Migrant Health Program Population Estimates, May 1975.

Therefore, in estimating target populations for the purposes of this report, no attempt was made to adjust for the difference in the Department of Labor's Employment Service definition of a "migrant" farmworker and the DHEW Migrant Health Program's definition where DOL ES-223 data was used as a primary source. It should be noted that in virtually every respect the MHP definition allows a less restrictive interpretation of "migrant" or "seasonal" status than does the DOL. Thus the MHP requirements are inclusive of "eligibles" under the DOL requirements. It should also be noted that such definitional variance may account for a probability of error of ± 5% in the most disaggregated totals (county estimates) but that such an error factor diminishes to an insignificant proportion as these estimates are compounded. (Neither of these two sources deal with long settled out migrants, as does USCE, so this factor presents no complications for the present counts.)

4. Use of Other Data Sources

In some cases ES-223 data was considered inappropriate for use in determining county-by-county estimates. In such cases other sources were used as primary sources (as footnoted at the bottom of these states' data in the overall table in the Appendix) or were compared with ES-223 data to determine more accurate counts. Severe obstacles exist in transferring data collected under different authorities and for different purposes into one internally consistent count. However, for the purposes of this study, an attempt was made to uniformly estimate dependents and household members, variability due to unemployment, under-reporting, etc., and other considerations of methodology which were used in evaluating ES-223 data as discussed above. Thus, each data source other than ES-223 reports was carefully evaluated and adjusted to correspond with the categories reported by the ES-223 data. These sources, where used, are cited under the "Notes" heading in each state listing in the overall Table in the Appendix.

MIGRANT PROGRAMS and COMPONENTS
ANNUALIZED FUNDING LEVELS

Recipient Number and Name	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
107020 Community Renewal Team of Greater Hartford, Inc. (Neighborhood Legal Services)	50,000	58,250	-	-	50,982	56,041	47,396	47,396	54,081	59,987
120000 Pine Tree Legal Assistance	-	-	70,000	105,259	143,755	177,805	155,935	155,935	177,937	197,350
130000 New Hampshire Legal Assistance	-		-	-	-	5,000	6,385	6,385	5,006	5,550
140000 Rhode Island Legal Services	-	-	-	-	-	5,000	6,385	6,385	5,006	5,550
144000 Vermont Legal Aid, Inc.	-		-	-	-	5,000	6,385	6,385	5,006	5,550
233127 Mid Hudson Legal Services	75,000	87,375	101,414	111,270	116,836	-	-	-	-	-
233129 Farmworker Legal Services	-	-	-	-	-	228,026	199,977	199,977	228,196	253,090
233130 Monroe County Legal Assistance	-	-	12,000	55,235	86,533	-	-	-	-	-
250310 Puerto Rico Legal Services	250,000	291,250	305,813	322,633	338,765	359,091	316,923	316,923	359,359	398,566
321016 Legal Aid Bureau	-	-	67,990	79,998	83,998	90,538	79,602	79,602	90,606	100,492
331020 Camden Regional Legal Services	-	-	70,000	128,383	139,063	161,161	141,250	141,250	161,180	178,765
423039 Michigan Migrant Legal Assistance	100,000	116,500	215,686	362,696	380,600	403,444	353,820	353,820	403,766	447,793
436150 Advocates for Basic Legal Equality	50,000	64,236	136,675	222,910	237,829	252,099	221,091	221,091	252,287	279,812
447026 Peninsula Legal Aid Center	-		36,754	57,576	60,653	66,090	58,190	58,198	66,128	71,125
449031 West Virginia Legal Services Plan	-	-	-	-	-	11,464	10,056	10,056	11,473	12,725

MIGRANT PROGRAMS and COMPONENTS
ANNUALIZED FUNDING LEVELS

Recipient Number and Name	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
514020 Legal Assistance Foundation of Chicago	82,000	95,530	136,512	196,006	205,806	229,152	200,089	200,089	229,322	253,232
515030 Legal Services Organization of Indiana	-	-	70,000	96,232	101,066	107,107	93,933	93,933	107,187	118,802
516006 Legal Services Corporation of Iowa	-	-	-	-	-	12,282	10,771	10,771	12,291	13,632
517001 Kansas Legal Services	-	-	-	42,176	48,666	51,596	45,239	45,239	51,622	57,256
524030 Southern Minnesota Regional Legal Services	-	-	103,566	262,278	275,392	[illegible]	256,010	256,010	292,133	324,005
526010 Legal Aid of Western Missouri	-	-	-	-	-	[illegible]	8,617	8,617	9,832	10,905
528030 Western Nebraska Legal Services	-	-	-	-	-	25,383	22,261	22,261	25,402	28,176
542020 Black Hills Legal Services	-	-	-	-	-	5,000	4,385	4,385	5,006	5,530
550010 Legal Action of Wisconsin	50,000	58,230	71,705	90,615	94,936	100,632	88,256	88,256	100,707	111,696
601007 Legal Services Corporation of Alabama	-	-	-	29,457	33,989	36,028	31,597	31,597	36,055	39,989
610020 Florida Rural Legal Services	-	80,000	340,474	640,318	672,336	801,611	703,013	703,013	802,208	889,729
611920 Georgia Legal Services Program	-	-	98,818	247,617	259,998	275,590	241,699	241,599	275,803	305,893
618041 Western Kentucky Legal Services	-	-	-	-	-	5,000	4,385	4,385	5,006	5,569
619051 Acadiana Legal Services	-	-	-	58,266	67,206	71,236	62,476	62,476	71,289	79,067
634000 Legal Services of North Carolina	-	-	83,683	207,480	232,453	251,600	220,478	220,478	251,587	279,035
641010 Neighborhood Legal Assistance Program	30,000	34,950	57,732	60,907	93,468	99,076	86,890	86,890	99,150	109,967
643061 West Tennessee Legal Services	-	-	-	-	-	10,665	9,336	9,336	10,653	11,815

MIGRANT PROGRAMS and COMPONENTS
ANNUALIZED FUNDING LEVELS

Recipient Number and Name	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
203030 Community Legal Services	106,000	123,490	129,665	220,952	232,000	245,920	215,672	215,672	246,103	272,953
206030 Colorado Rural Legal Services	70,000	81,550	107,603	148,256	153,569	162,283	142,761	142,761	162,905	180,678
232026 Southern New Mexico Legal Services	-	-	24,037	60,873	63,917	89,072	78,116	78,116	99,138	98,863
232056 Western Oklahoma Legal Services	-	-	-	-	-	78,605	69,937	68,937	78,666	87,266
744100 Texas Rural Legal Services	-	125,000	631,792	1,237,323	1,459,110	1,366,657	1,356,418	1,356,418	1,547,009	1,716,675
745000 Utah Legal Services	-	-	-	29,457	33,989	36,028	31,597	31,597	36,055	39,999
805260 California Rural	-	-	-	939,223	1,109,256	1,275,809	1,031,186	1,031,186	1,176,686	1,305,060
829050 Nevada Legal Services	-	-	-	-	-	6,913	6,309	6,309	6,917	5,653
913000 Idaho Legal Aid Services	-	-	99,316	163,695	171,000	196,193	170,917	170,917	196,137	215,570
927000 Montana Legal Services	-	-	11,372	89,017	93,468	99,076	86,090	86,090	99,150	109,967
938006 Oregon Legal Services Corporation	-		86,356	218,600	247,295	262,133	229,091	229,091	262,329	290,969
948007 Evergreen Legal Services	-	-	162,162	365,631	383,913	606,068	356,093	356,093	407,251	451,482
951010 Legal Aid Services	-	-	-	36,162	39,395	41,759	36,423	36,423	41,790	46,369
	863,000	1,218,381	3,207,096	6,082,115	7,709,876	8,563,018	7,492,230	7,492,230	8,549,382	9,482,125
NATIONAL SUPPORT CENTER										
309012 Migrant Legal Action Program	407,000	429,385	482,354	538,883	565,827	599,777	452,206	452,206	516,012	572,309
	1,270,000	1,667,766	3,689,450	7,620,998	8,275,703	9,162,795	7,944,436	7,944,436	9,065,394	10,054,434
DEFUNDED HARTFORD PROGRAM			58,250	61,456	31,296					
SMALL STATES EXPANSION (MLAP OT)				72,303	83,427					
SPECIAL NEEDS NOT ANNUALIZED			11,000	106,189	107,725					
EXPANSION NOT ANNUALIZED			510,133		361,906	196,876	170,907	170,907	195,021	216,297
	1,270,000	1,667,766	4,268,833	7,860,946	8,860,057	9,359,671	8,115,343	8,115,343	9,260,415	10,270,731

Prepared by: Spencer Walker, OPS/CBU 2/12/85
Reviewed by: C. Francis

Table 2--Migrant farmworkers, by duration of farmwork, 1960-81

Year	Total	Days of farmwork during the year 1/			
		Fewer than 25	25 to 74	75 to 149	150 and over
	Thousands				
1960	409	92	122	84	111
1961	395	99	131	80	85
1962	380	92	133	83	73
1963	386	108	89	111	78
1964	386	114	102	88	82
1965	466	165	114	92	94
1966	351	76	114	73	87
1967	276	81	81	56	57
1968	279	103	85	39	52
1969	257	85	84	47	41
1970	196	61	59	31	45
1971	172	55	57	35	24
1972	184	46	55	35	48
1973	203	57	57	37	52
1974	209	68	63	35	43
1975	188	45	74	21	48
1976	213	66	60	53	34
1977	191	39	73	35	44
1978 2/					
1979	217	56	80	33	48
1980 2/					
1981	115	24	37	12	43

1/ Data are rounded to nearest thousand and may not add to total.
2/ No survey conducted.

c. PLEASE INDICATE THE METHODOLOGY USED (ACTUAL COUNT OR SAMPLING) AND IF A SAMPLING, THE SIZE OF THE SAMPLING?

A: Time constraints don't allow me to list all of the strengths and weaknesses, but I have asked the Corporation to prepare a more complete response.

8. YOU STATED THAT THE NUMBER OF MIGRANTS APPEAR TO BE DECREASING? OTHER THAN YOUR OWN PRACTICE, PLEASE EXPLAIN IN DETAIL THE BASIS OF THIS ASSERTION?

A: The Department of Agriculture indicates that in 1965 there were 466,000 and in 1983 there were 226,000 migrants.

9. IN 1981 THE DEPARTMENT OF AGRICULTURE'S HIRED FARM WORK FORCE STUDY ESTIMATED 115,000 MIGRANTS. THEIR 1983 STUDY APPARENTLY ESTIMATES 226,000. HOW DO YOU RECONCILE THIS WITH YOUR ASSERTION THAT THE NUMBER OF MIGRANTS IS DIMINISHING?

A: Please See 8.

10. YOU STATED THAT THE CENSUS BUREAU COUNTED FARMWORKERS. HOW MANY DID THEY COUNT?

A: 1,334,123

a. WHAT WAS THE QUESTION USED TO IDENTIFY OCCUPATION?

A: I have requested the Corporation to obtain the information from the Bureau of Census.

b. WHEN WAS THE QUESTION ASKED? (WHAT MONTH?)

A: I have asked the Corporation to obtain the information from the Bureau of Census.

c. HOW ACCURATE DOES THE CENSUS BUREAU CLAIM THE NUMBER IS?

A: See the attached memoranda.

LEGAL SERVICES ORPORATION

MENDEZ INSERT FOR:

PAGE 14 -- QUESTION 10c

MEMORANDUM

DATE: March 9, 1985

TO: LSC Board of Directors

FROM: Joel Thimell, JExecutive Office

SUBJECT: Census Bureau Data on Migrar Farmworkers

On March 7, 1985, Mr. Mendez, Au rey Dean of LSC's Office of Information Management and I met witl the following officials of the Census Bureau: Paula Schneider, Proc am Director of the Population Division; Dr. Jeffrey Passel, Demogra hic Research; Patricia Berman, Director for Racial Statistics; and I ane DeAire, a demographer with the farm-related section. We discuss d the Census Bureau's 1980 data and statistics relating to migrant fa mworkers for an hour and a half.

The following information was pr vided to us at the meeting:

1. The 1980 Census population f gures are extremely accurate with less than a one percent err factor.

2. Migrant farmworkers were cou ted in the overall 1980 Census population.

3. Migrant farmworkers are not eparately defined by the Census Bureau but they do count total f rmworkers. Accordingly, the Census Bureau cannot identify mi rants separately by occupation. The 1980 Census counted 1,334,12 farmworkers of all kinds. The Census Bureau officials stated t at the Department of Agriculture has the most reliable figures on how many of those farmworkers were migrants. (Note: the Depa rment of Agriculture indicates that its 1983 figures will repor 226,000 migrant farmworkers.)

4. In sum, the migrant farmwork r population is counted in the census data which is used to fun LSC's basic field programs. Funds given to migrant programs rovide a second pool of money for the migrant farmworker popul tion.

These Census Bureau officials ha e indicated a willingness to testify before the Board upon these m tters upon request.

LEGAL SERVICES CORPORATION

MEMORANDUM

DATE: April 3, 1985

TO: Files

FROM: Joel Thimell

SUBJECT: Conversation with Jeff Passel, Census Bureau

Dr. Passel acknowledged that about 5% blacks were undercounted in the 1980 Census, with some age groups of black males as high perhaps as 16%. He also stated that Hispanics were undercounted about the same as blacks but the differences between male and female didn't seem as apparent.

However Dr. Passel also noted that black males are not that large a group. The Census counted 12.5 million black males, this best estimate is around 13.6 million for an undercount of 1.1 million. For ages 35-44, 1.2 million black males were counted, the Bureau estimates an undercount of 16% for a total of 1.4 million - a discrepancy of only 200,000.

Further, Dr. Passel stated that the proportional error among various groups is not as great as the absolute error. All groups are missed to some extent so the Census count of this proportion is not off much, e.g. Blacks counted in 80 Census comprised 11.2% of pop., they estimate the actual proportion at 11.6%, Hispanics 6.6% vs. 7.0%. For poor people, he felt that the errors were likely to be spread proportionally throughout the country. He is sending me two studies of funding formulas which show that when distributing a fixed pot of money to various groups that the Census data will quite fairly represent the location and proportion of these groups.

11. YOU ARE APPARENTLY PLANNING TO ADOPT A GRADUAL PROCESS FOR PHASING-IN INCREASES IN BASIC FIELD FUNDING. WHY AREN'T YOU DOING THE SAME THING REGARDING REDUCTIONS TO MIGRANT PROGRAMS?

A: The 4.6% to the field programs increase will go out as soon as it becomes available. The reduction in migrants programs is being used to partially fund the increase in basic field programs.

QUESTIONS FOR MR. MENDEZ ON MIGRANT LEGAL SERVICES PROGRAMS:

1. I UNDERSTAND THAT THE LEGAL SERVICES CORPORATION STATED IN RESPONSE TO A LETTER FROM REPRESENTATIVE KASTENMEIER

"...THE BOARD CAN ASSURE CONGRESS THAT NO CHANGES IN THE DELIVERY SYSTEM WILL BE MADE UNTIL A STUDY (OF THE NUMBER OF MIGRANTS) HAS BEEN COMPLETED, ANALYZED, AND FULLY DISCUSSED WITH CONGRESS."

HAS THE BOARD STARTED SUCH A STUDY? WHY NOT?

A: YES.

WHAT HAS THE BOARD VOTED ON IN TERMS OF FUNDING FOR MIGRANT LEGAL SERVICES PROGRAMS?

A: $7,604,717.00

--ON WHAT BASIS DID BOARD DECIDE TO CUT FUNDING FOR MIGRANT PROGRAMS BY 21.6%?

A: There is a conflict concerning the total number of migrants in the country and I voted based on that. Further, farmworkers are already counted in census data used to fund field services programs, so they are funded to the extent they are double counted.

--WHAT WILL THE EFFECTS OF SUCH A FUNDING CUT ON THE MIGRANT DELIVERY SYSTEM? (WON"T SUCH A FUNDING CUT ELIMIATE AS MANY AS 20 OUT OF THE 34 MIGRANT LEGAL SERVICES PROGRAMS?)

A: Migrants were counted in the 1980 census data which is used to fund our basic field programs. Thus the migrant population is already funded through basic field programs. Special migrant funding is a second layer of funding for this population. The funds cut from this second layer of funding are being used to increase the basic field programs.

-- DOESN'T THAT CONSTITUTE A "CHANGE IN THE DELIVERY SYSTEM," A CHANGE THE BOARD PROMISED NOT TO MAKE WITHOUT PRIOR, ADEQUATE STUDY?

A: NO, that does not change the delivery system. It only changes the amounts allocated within the system.

2.CAN YOU TELL US HOW MANY MIGRANTS WE HAVE IN THIS COUNTRY?

A: I believe there are between 200,000 and 300,000 migrants in this country.

-- I UNDERSTAND YOU VISITED THE CENSUS BUREAU TO INQUIRE ABOUT THEIR METHODS FOR COUNTING MIGRANTS. WHAT DID YOU LEARN THERE?

A: See the attached letters.

MENDEZ INSERT FOR

PAGE 37 -- QUESTION 2

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

272-4040

March 20, 1985

Paula J. Schneider
Program Director
Bureau of Census
Population Division
Room 2366-3
Washington, D.C. 20233

Dear Mrs. Schneider:

I would like to thank you, Jeffrey Passel, Patricia Berman and Diana DeAire for taking the time to meet with Mr. Mendez, Ms. Dean and me on March 7, 1985. Your discussion of the 1980 Census as it relates to Native Americans and migrant farmworkers was most helpful.

I would like to summarize my understanding of the key points made in our discussion:

Native Americans

1. The Census Bureau collects data on Native Americans on a geographic rather than a tribal basis. These geographic areas have two major components: Federal and state reservations and tribal trust lands (which have high Native American concentrations), and non-traditional Native American residences (such as urban areas). Accordingly, the Bureau can identify the number and characteristics of Native Americans within a given geographic area, but cannot state how many members belong to a particular tribe.

2. The Census Bureau relies on self-identification instead of legal or tribal definitions to count Native Americans. The Bureau believes that its 1980 Census count of Native Americans residing within reservations and tribal trust lands is quite accurate. But it does have reason to believe that the number of Native Americans in non-tradiitional Native American regions is overreported.

3. The Census Bureau can perform computer tabulations and analysis of Native Americans residing within reservations and tribal trust lands upon request. The price would depend upon the complexity of questions asked but it most likely would not exceed $5,000.

4. The Census Bureau is also available to testify on its data upon request.

Migrant Farmworkers

1. The 1980 Census population figures are extremely accurate with less than a one percent error factor.

2. Migrant farmworkers were counted in the overall 1980 Census population.

3. Migrant farmworkers are not separately defined by the Census Bureau but they do count total farmworkers. Accordingly, the Census Bureau cannot identify migrants separately by occupation. The 1980 Census counted 1,334,123 farmworkers of all kinds. Your staff stated that the Department of Agriculture has the most reliable figures on how many of those farmworkers were migrants.

4. The Legal Services Corporation's basic field programs are funded to serve the entire poverty population as defined by the 1980 Census. As the migrant farmworker population is counted in the 1980 Census data which is used to fund LSC's basic field programs, funds given to migrant programs provide a second pool of money for the migrant farmworker population.

5. You also indicated that the Bureau will be releasing a study entitled "Characteristics of the Rural and Farm-Related Population" in four to six weeks. We would appreciate receiving a copy when it is available.

I trust this summary accurately reflects our discussion. I will contact you shortly to discuss our future needs for assistance in these areas. Thank you, once again, for all your help and consideration.

Sincerely,

Joel Thimell

Joel Thimell
Acting Staff Coordinator
Audit and Appropriations Committee

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

April 11, 1985

RECEIVED
APR 15 1985
EXECUTIVE OFFICE

Mr. Joel Thimell
Acting Staff Coordinator, Audit
and Appropriations Committee
Legal Services Corporation
Washington, D.C. 20005

Dear Mr. Thimell:

We offer the following clarifications to the points detailed in your recent letter which summarized your understanding of our discussions on March 7.

Native Americans

Your first point was not completely accurate. The Census Bureau collects data on American Indians on a geographic basis as well as for tribes. Data from the 1980 census have been published for a variety of areas such as states, counties, places, and reservations. Plans are to publish extensive 1980 census data on reservations, tribal trust lands, the historic areas of Oklahoma (excluding urbanized areas), Alaska Native Villages, and for American Indian tribes for the United States, states, and counties in the Supplementary Report Series later this year. Another report, in our Volume 2 Series, will be published this summer and will show data on American Indian reservations, the historic areas of Oklahoma (excluding urbanized areas), and tribes. We have included your name on our mailing list to be notified when these reports are published.

Your last sentence in point 2 is too strong. We meant to say that preliminary evaluations show that the number of persons in non-traditional Native American areas reported as being American Indians may be too high.

Migrant Farmworkers

Your first point about the 1980 census under the "Migrant Farmworkers" heading is much stronger than what we said in our discussions. In particular, we are neither as certain about the coverage of the census as your statement implies, nor is the precision of our undercount estimates as great as you imply. The Bureau's research concerning the 1980 census has not produced a definitive estimate of the undercount. The results do indicate that the 1980 census is more accurate than 1970 and previous censuses. Overall undercount rates appear to be relatively small, but some demographic groups are covered less well than others. Notwithstanding these coverage differences, census data are used for numerous fund allocation programs without adjustments for coverage error.

I am enclosing a paper by Passel, Cowan, and Wolter which provides an overview of the Bureau's programs to measure coverage of the 1980 census. Two different approaches to this problem were used--match studies and demographic analysis. The match studies were unable to provide definitive estimates of undercount for numerous reasons, but primarily because of missing data in the surveys which were matched to the census. Twelve different sets of estimates were produced using different assumptions about the missing data. The estimates range from an overall undercount of 2.0 percent to an estimated overcount of 1.0 percent. In all 12 estimates, Blacks (-0.7 percent to 7.2 percent) and Hispanics (0.2 percent to 7.6 percent) had higher undercount rates than the rest of the population. In addition, within each set of estimates the rates for Blacks and Hispanics were not significantly different.

The demographic analysis estimates have not provided definitive estimates either. In this case, the major difficulty is the lack of a totally defensible estimate of the number of undocumented aliens in the country in 1980. According to the work cited in the Passel-Cowan-Wolter paper (p.3), the legally resident population of the country was undercounted by about 0.5 percent. Subsequent research indicates that the legally resident population was undercounted by about 1 percent. Various reasonable assumptions concerning the number of undocumented aliens living in the country would place the estimated undercount of the total population in the 1-2 percent range according to the demographic analysis estimates.

We would like to expand point 3 regarding Migrant Farmworkers. The census count of farmworkers that you cited refers to the number of employed persons who worked primarily as farmworkers during the reference week. The reference week was the calendar week preceding the date of completing the questionnaire, which for most people was the last week of March 1980. The Department of Agriculture cannot specify exactly how many of the 1.3 million persons classified as farmworkers in the 1980 census were migrants. What they can provide you with is an estimate of the total number of migrant farmworkers, based on sources other than the census. We suggest you contact Leslie Whitener at the Department of Agriculture (202) 475-4215, for more information regarding the definition of migrant farmworkers and sources of data.

The exact date of publication of the report mentioned in point 5 is unknown at this time. There is one table in the report which shows characteristics of farmworkers by region, and we will be happy to provide you with a copy of that table as soon as it becomes available.

Thank you for the opportunity to comment on your summary of our discussions.

Sincerely,

Paula J. Schneider

PAULA J. SCHNEIDER
Program Director
Population Division

Enclosure

-- DOES THE CENSUS BUREAU HAVE AN ESTIMATE OF HOW MANY MIGRANTS THEY ARE NOT ABLE TO FIND IN ORDER TO COUNT THEM (BECASUE OF THE CONSTANT MOBILITY OF SUCH MIGRANTS?) DID THEY NOT TELL YOU THAT THEY "MISS" BLACKS AND HISPANICS AT A HIGH RATE, AS HIGH AS 18% AMONG SOME WORKING AGE MEN?

I don't recall that statement. We did discuss the undercount problem but the Census officials indicated that the ranges for black and hispanic undercounts were approximately 6%. That statement is not important since it means that the bulk of the migrants have been counted and that the Corporation is double funding that counted population. I had already decided to reduce funding for the migrant and Native American programs based upon information previously received. I went to the Census Bureau to verify what I believed about migrants and Native Americans. The information I received at the Census Bureau helped to change my mind about Native Americans but confirmed my position on the migrant program.

A: See the attached letters

-- DID YOU CONVEY THAT INFORMATION TO THE BOARD?

A: See attached testimony.

MENDEZ INSERT FOR

PAGE 18

TRANSCRIPT OF PROCEEDINGS

LEGAL SERVICES CORPORATION

APPROPRIATIONS AND AUDIT COMMITTEE MEETING

Pages: 1 through 160

Washington, D.C.

March 7, 1985

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Washington, D.C. 20005
(202) [illegible]

on a grant or whether it was --

CHAIRMAN MENDEZ: It was done in connection with The American Bar Association.

MS. BERNSTEIN: Okay, so was there any type of bidding process to determine which group would be able to best prepare the study?

CHAIRMAN MENDEZ: I'll tell you what, I don't want to enter into any dialog on this issue now. I'll refer you to Mr. Broccoletti and he can answer your questions at another time.

At this time, I would call Joel Thimmell.

MS. BERNSTEIN: May I ask where we are on the agenda?

CHAIRMAN MENDEZ: We are taking -- Mr. Thimmell is going to be commenting on some of the line items. Please state your name?

MR. THIMMELL: My name is Joel Thimmell,

CHAIRMAN MENDEZ: And who are you with?

MR. THIMMELL: I work for the Legal Services Corporation Executive Office.

CHAIRMAN MENDEZ: Joel, this morning you went out and you interviewed several individuals at the Bureau of Census, is that correct?

MR. THIMMELL: That's correct.

CHAIRMAN MENDEZ: And who were they?

MR. THIMMELL: Dr. Jeffrey Pascell, who is in their demographic research division, Diane D'Ayer who is a demographer as well. Paula Schneider who is the program director for the Population Division, and Patricia Burman who is in charge of their racial statistics.

CHAIRMAN MENDEZ: Now, inviting your attention to the migrant issue, there was several questions about migrant populations and why the migrants were counted before. Can you recount what they advised you today?

MR. THIMMELL: We were advised that all migrants have been counted in the total population statistics compiled by the census bureau, with less than one percent error in those statistics.

CHAIRMAN MENDEZ: Was the migrants, were the migrants counted separately or were they counted as part of the overall population?

MR. THIMMELL: They are not counted separately; the do not have a separate definition for migrants; but they are counted within the overall statistics for the entire population.

CHAIRMAN MENDEZ: And they are lumped in the farm worker category, is that correct?

MR. THIMMELL: They would be lumped in the farm worker category.

CHAIRMAN MENDEZ: What did the Bureau indicate that probably the most valid records concerning migrants were?

MR. THIMMELL: They suggested the Department of Agriculture maintains studies on the number of migrants and they also referred to the Bureau of Labor Statisics monthly labor review.

CHAIRMAN MENDEZ: And have you reviewed those reports?

MR. THIMMELL: I have.

CHAIRMAN MENDEZ: And do you have some idea about what the migrant total is?

MR. THIMMELL: The most recent figures according to the Department of Agriculture, that are not yet released, statistics for 1983, which have been confirmed over by phone would be about 226,000 migrants in 1983.

CHAIRMAN MENDEZ: In essence then, what they've told you is for the purposes of this, we are double counting these individuals?

MR. THIMMELL: That's correct. If migrants are already included in the census statistics that we use to fund all the remaining basic field programs which have service throughout the country.

CHAIRMAN MENDEZ: Does any one of the Board have any questions -- of the Committee, excuse me?

You also spoke today to someone from the Bureau of Indian Affairs, is that correct?

SENATOR DODD'S QUESTIONS FOR MR. MENDEZ

RESPONSE BY MR. MENDEZ

1. IN RESPONSE TO MY PRIOR QUESTIONS, YOU HAVE PRESENTED THE COMMITTEE WITH INFORMATION FROM THE DEPARTMENT OF AGRICULTURE THAT THE CENSUS COUNT OF FARMWORKERS (1,334,123) MAY REFLECT AS MUCH AS TWO-THIRDS UNDERCOUNT. HOWEVER, YOU CONTINUE TO CITE THAT NUMBER.

--WHY HAVE YOU NOT CITED DATA YOU HAVE RECEIVED ABOUT A CALIFORNIA STUDY ESTIMATING 1.3 MILLION MIGRANTS AND A DEPT. OF EDUCATION STUDY ESTIMATING 1.5 MILLION MIGRANT CHILDREN?

A: The discrepancy between the Census Bureau and Department of Agriculture counts of farmworkers is easy understood when you consider the following facts. The Department of Agriculture estimate of 2,492,000 hired farmworkers in 1981 includes nearly 1 million farmworkers who worked fewer than 25 days in 1981. Such persons clearly have other primary occupations which they would have reported to the Census Bureau. The remaining farm total of 1,529,000 closely correlates with the Census figure of 1,334,123 in 1980. As I've stated, a migrant is only a migrant when he's working away from home. The rest of the time he should receive service from a basic field program like anyone else.

I have not received the two studies which you mentioned so I have had no way to assess their methodology, scope, the definitions used, or a host of other variables. I am aware of an old Health, Education and Welfare count which was discussed in the LSC Lillesand study. That figure was 500,000 migrant school children but included everyone who had been a migrant in the past five years. Due to the high turnover of migrants, that would include numerous children whose families were no longer migrants. Stephen Nagler, director of the Migrant Legal Action Program, provided the LSC Audit and Appropriations Committee on March 1, 1985 a list of all the migrant studies he thought relevant to our deliberation. Neither study was included. LSC staff has asked Mr. Nagler about the California study on at least two occasions, including a meeting on May 9, 1985. On both occasions, Mr. Nagler stated that the California study was incomplete, that he did not have a copy of it, and that he did not know when the study would be available.

2. IN RESPONSE TO MY PRIOR QUESTIONS, YOU CHARACTERIZED A FUNDING CUT OF 21.6% TO MIGRANT PROGRAMS AS A REALLOCATION OF FUNDS RATHER THAN A CHANGE IN THE DELIVERY SYSTEM.

--IS IT POSSIBLE THAT 20 OUT OF 34 MIGRANT PROGRAMS COULD BE ELIMINATED BY THE PROPOSED FUNDING CUT? WOULD THIS NOT POSE A DRAMATIC CHANGE IN THE DELIVERY SYSTEM?

A: The 21.6% reduction in migrant funding will not require the elimination of any migrant programs. The total cut in migrant funding will only be $2 million while basic field funding is being increased $11.3 million. In 41 of 43 instances, migrant units are a component of a basic field program. Because basic field is being increased, these programs will have more monies available to serve all their clients, including migrants. In fact, the migrant programs which currently receive the least funding will be impacted less severely than the large, well-funded programs because the increase in basic field funding to the low-funded migrant programs will greatly exceed the cuts in migrant funding. Accordingly, I do not believe this would result in a change in the delivery system.

Additional Questions for Mr. Mendez

1. Will you seek aggressively all possible studies concerning the number of migrants actually in the United States?

   Answer: Yes. I will actively search for all studies concerning migrants and will read and share them with my fellow Board members. I also understand that your office will help me in locating and obtaining migrant studies and I appreciate your assistance.

2. Will you please state what you believe will be the affect on local programs of the funding cut for migrant services?

   Answer: As you know, there currently are 41 migrant units which are components of basic field programs. For Fiscal Year 1986, these units will receive 78.4% of the funds they received in Fiscal Year 1985. The balance of the funds, approximately $2 million, coupled with some $9.3 million made available from other sources, will be distributed to all basic field programs. In accordance with the Act, these local programs will decide how to allocate these additional revenues given the priorities they have chosen for themselves.

   I believe local programs understand best the specific needs of their comminity. Since this kind of funding decision is made on a local level, I cannot guarantee that all of the programs throughout the United States will use all of the increase for migrant services. However, I will urge all programs to consider the needs of migrants when deciding what to do with the funds and believe that migrant needs will be given high priority in such states as California, Texas and Florida.

   Furthermore, I will re-examine the issue of migrant services funding when the Board takes up the issue of field funding for Fiscal Year 1987.

The **Chairman**. With that, we will recess, and hope that we can hold the mark up on your confirmations within the next couple of weeks.

Thank you so much.

Mr. **Durant**. Thank you, Mr. Chairman.

[Whereupon, at 11:45 a.m., the committee was adjourned.]

○